

Robert N. Meltzer
Attorney At Law

P.O. Box 1459
Framingham, MA 01701
508.872.7116
robmeltzer@aol.com

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION

CIVIL ACTION NO: 05-CV-40072 FDS

LANDWORKS CREATIONS, LLC)	
)	
Plaintiff	)	AFFIDAVIT OF ROBERT
	)	MELTZER IN SUPPORT OF
v.	)	PLAINTIFF, LANDWORKS
	)	CREATIONS, LLC'S
UNITED STATES FIDELITY AND	)	OPPOSITION TO THE MOTION
GUARANTY COMPANY and	)	OF DEFENDANT, LOVETT-
LOVETT-SILVERMAN CONSTRUCTION	)	SILVERMAN FOR SUMMARY
CONSULTANTS, INC.	)	JUDGMENT PURSUANT TO
	)	F.R.C.P. 56(c) AND F.R.C.P.
Defendants	)	56(f)

I, Robert N. Meltzer, do depose and swear as follows:

1. I am counsel for the Plaintiff in the above-captioned matter. I have represented clients in more than 400 claims brought under G.L. c. 149 §29. Every case but this one has proceeded in the state courts of the Commonwealth, including approximately 75 cases involving USF & G.

2. The deposition pages and exhibits attached hereto are true and accurate copies of these documents. The documents appended are:

Exhibit A: excerpts from the Deposition of James Peters

Exhibit B: excerpts from the Deposition of Katy Crocket

Exhibit C: excerpts from the Deposition of Bill Meritz

Exhibit D: excerpts from the Deposition of Robert Bullock

Exhibit E: Deposition Exhibits referenced in the Memorandum of law

3. This affidavit is also submitted pursuant to F.R.C.P. 56(f).

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Framingham, MA 01701
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4. This Court has stayed discovery as to the claims policies of USF & G. In so doing, the Court has prevented the Plaintiff from conducting discovery on a vital point for this Opposition, and so this affidavit is submitted pursuant to F.R.C.P. 56(f).

5. In order to understand the extent of Lovett-Silverman's conduct, this Court requires an understanding of how dramatically this claim was mishandled when compared to claims involving similar projects during the same time frame.

6. In the Plaintiff's Mandatory Disclosures, the Plaintiff has identified a project known as Hull High School, and the Plaintiff has identified witnesses to that project. Like the case at bar, the Hull High School project involved Jackson Construction, a project failure in 2005, USF & G as the Surety and Hermes, Netburn as Surety counsel. Plaintiff's counsel has been involved in a number of Jackson cases similar to both Hull High School and Shrewsbury Middle School. I have attached as Exhibit F several exhibits relevant to Hull High School. The first is the Verified Complaint for a subcontractor on that project, filed in August of 2005. The second is the ratification agreement signed in May of 2006. The last is an e-mail between the plaintiff in that case and the construction consultant for USF & G. These documents, which are consistent with the manner in which USF & G handle claims, shows that ratification does occur after the filing of suit, and that communication between the consultant and the plaintiff does occur following suit. These elements demonstrate that Robert Bullock was not telling the truth to Neal Matthews in August of 2005.

6. Discovery into claims practices will also demonstrate how unusual it was for this matter to be removed to this Court, and how unusual it was to have one claim handled serially by four top-drawer law firms. Discovery will also demonstrate how unusual this claim was in the sense of total lack of cooperation and communication toward the claimant, totally unlike the

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Attorney At Law

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robmeltzer@aol.com

accepted practice not only in the construction industry, but also amongst the construction law bar.

7. When the Plaintiff is permitted to delve into discovery relating to unfair settlement practices, it is expected that Lovett-Silverman's conduct in the case at bar deviates dramatically not only from industry custom and practice, but also deviates dramatically from the Surety's own practices. This particular discovery will also show why Landworks was reasonable in believing that Lovett-Silverman was working toward ratification in August of 2005 and why it was reasonable to believe that Lovett-Silverman was acting honestly toward it.

8. Because of the stay of discovery on the claims practices, the Plaintiff is restricted from providing this evidence to the Court at this time.

9. As further part of the Plaintiff's claim under c. 176D, the Plaintiff would have conducted discovery in to the other 20 lawsuits arising out of the Shrewsbury project. This discovery would have highlighted the process of "banging" and would have provided to this Court further evidence of volitional fraud. The Court should note that the appropriate witnesses have been identified in mandatory disclosures, even though the Plaintiff was barred from conducting this relevant discovery.

10. Because of the stay of discovery on the claims practices, the Plaintiff is restricted from providing this evidence to the Court.

Sworn under the pains and penalties of perjury this 17th day of April, 2007.

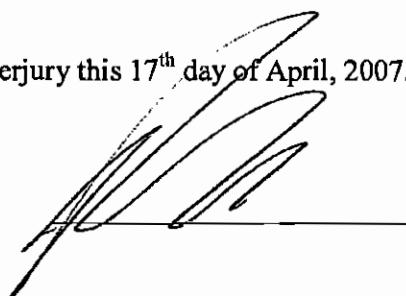


EXHIBIT A

1 (Pages 1 to 4)

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UNITED STATES DISTRICT COURT
 DISTRICT OF MASSACHUSETTS
 CENTRAL DIVISION

CA NO. 05-CV-40072FDS

LANDWORKS CREATIONS, LLC)
 Plaintiff,)
 v.)
)
 UNITED STATES FIDELITY AND)
 GUARANTY COMPANY and)
 LOVETT-SILVERMAN CONSTRUCTION)
 CONSULTANTS, INC.,)
 Defendants.)

 DEPOSITION OF JAMES M. PETERS, JR., called
 as a Witness by Counsel for the Plaintiff, pursuant
 to the applicable provisions of the Massachusetts
 Rules of Civil Procedure, before Ann M. Lavole,
 Court Reporter and Notary Public in and for the
 Commonwealth of Massachusetts, taken at Mountain
 States Law Group, P.O. Box 1459, Framingham,
 Massachusetts, on Tuesday, February 27, 2007,
 commencing at 10:20 a.m.

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4	James M. Peters, Jr.	
5	By Mr. Meltzer	4
6		

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16	120 Summons	160
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Page 4

1 APPEARANCES

2
 3
 4 MOUNTAIN STATES LAW GROUP
 By: Robert N. Meltzer, Esq.
 5 P.O. Box 1459
 Framingham, Massachusetts 01701
 6 508-872-7116
 7
 8 Appear for the Plaintiff
 9
 10 HERMES, NETBURN, O'CONNOR & SPEARING, PC
 By: Eric C. Hipp, Esq.
 11 265 Franklin Street
 Seventh Floor
 Boston, Massachusetts 02110
 12 617-210-7750
 13 Appear for United States Fidelity
 and Guaranty
 14
 15 DONOVAN HATEM, LLP
 16 By: Marianne E. Brown, Esq.
 World Trade Center East
 17 Two Seaport Lane
 Boston, Massachusetts 02210
 18 617-406-4500
 19 Appear for Lovett-Silverman Construction
 Consultants, Inc.
 20
 21
 22
 23
 24

1 STIPULATIONS

2		
3		
4	It is stipulated by and between	
5	counsel for the respective parties that the	
6	deposition transcript will be read and signed by the	
7	deponent within thirty (30) days of receipt of the	
8	transcript under the pains and penalties of perjury.	
9	The filing and notary is hereby waived.	
10	It is further agreed that all	
11	objections, except as to form of the question and	
12	motions to strike are reserved until the time of	
13	trial.	
14		
15	James M. Peters, Jr., having been	
16	satisfactorily identified and duly sworn by the	
17	Notary Public, was examined and testified as	
18	follows:	
19		
20	EXAMINATION	
21	BY MR. MELTZER:	
22	Q. Can you state your name for the record?	
23	A. James Michael Peters, Jr.	
24	Q. Mr. Peters, have you ever been deposed	

14 (Pages 53 to 56)

Page 53	Page 55
<p>1 When did you become involved or first hear 2 about the Shrewsbury Middle School claim? 3 A. In the general time frame of February 2005. 4 Q. On that one, who first made you aware of 5 that particular project? 6 A. I don't recall. 7 Q. Did you have an understanding, in February 8 of 2005, what the status was of the Shrewsbury 9 Middle School project? 10 A. My understanding was that it was being 11 completed by Jackson Construction Company pursuant 12 to the terms of a completion agreement. 13 Q. Did you bring yourself up to speed with 14 what was happening with that project? 15 A. Over a period of time. 16 Yes. 17 Q. How did you bring yourself up to speed? 18 A. I obtained copies of documents that we had 19 that pertained to the Shrewsbury Middle School 20 project. 21 I made some site visits, discussed the 22 matter with Russ Warner, a member of our 23 construction engineering group, who had been 24 involved in the project.</p>	<p>1 projects unrelated to Standen. 2 Q. Which was the other Standen project that 3 they were completing? 4 A. It was the new highway facility that was 5 being built for the Town of Westford, Massachusetts. 6 Q. Do you know how Jackson came to be the 7 replacement contractor for that job? 8 A. I only have a general understanding. 9 Q. What's your general understanding? 10 A. My general understanding is that at the 11 time that United States Fidelity and Guaranty 12 Company was looking for a replacement contractor 13 that Jackson Construction Company was an existing 14 bond account of United States Fidelity and Guaranty 15 Company. 16 I don't know how their name became 17 identified but, at some point in time, it had been 18 identified. 19 And Tiffany Schaak commenced some 20 discussions with them that led to a completion 21 agreement being developed. 22 Q. Was it known that Jackson was a bond 23 account at the time that they were given the 24 opportunity to be the completion contractor for</p>
<p>1 Q. Was Lovett-Silverman involved in the 2 project in February of 2005? 3 A. No. 4 I don't think so. 5 Q. You said that Jackson was finishing the 6 project when you first became involved in this 7 situation? 8 A. Yes. 9 Q. Who is Jackson Construction? 10 A. Jackson Construction Company was a company 11 based in Canton, Massachusetts, that was in the 12 business of undertaking general construction 13 projects. 14 Q. They were brought in to complete Standen's 15 work on the Shrewsbury Middle School? 16 A. Yes. 17 Q. Had they completed any other projects for 18 your company under performance bond obligations that 19 your company held? 20 A. They were involved in completing another 21 construction project that related to the Standen 22 matter. 23 I don't recall whether or not they were 24 involved in completing any other construction</p>	<p>1 USF&G on the Standen project? 2 A. That's my understanding. 3 Yes. 4 Q. Is that something that happens in your 5 company of performance obligations; that you'll take 6 an existing bond account and retain them as a 7 completion contractor? 8 A. It does happen from time to time. 9 Yes. 10 Q. What other occasions can you recall where 11 that's happened? 12 A. It occurred in the case of the new highway 13 facility at Westford, Massachusetts. 14 Q. Also with Jackson? 15 A. Yes. 16 Q. Anyone else? 17 A. It occurred in connection with the MJ 18 Paquette matter in New Jersey. 19 Q. The situation with Jackson, when Jackson as 20 an existing bond account became the completion 21 contractor on the two Standen projects, do you know 22 if anybody made a determination that Jackson's own 23 financial stability could handle those completion 24 contracts?</p>

15 (Pages 57 to 60)

Page 57	Page 59
<p>1 A. No, I do not.</p> <p>2 Q. It is your understanding that Jackson then</p> <p>3 was someone identified by USF&G for this project, to</p> <p>4 complete the Standen project at Shrewsbury Middle</p> <p>5 School?</p> <p>6 A. It's my understanding that the</p> <p>7 Identification of Jackson as a candidate was done</p> <p>8 within United States Fidelity and Guaranty.</p> <p>9 Yes.</p> <p>10 Q. Do you know if there were any conversations</p> <p>11 with Lovett-Silverman about retaining Jackson on</p> <p>12 that project?</p> <p>13 A. I don't recall.</p> <p>14 I don't recall.</p> <p>15 Q. Do you know if Lovett-Silverman was</p> <p>16 involved in that selection process of a replacement</p> <p>17 contractor?</p> <p>18 A. I don't remember the specifics of their</p> <p>19 Involvement.</p> <p>20 Q. Have you ever seen a document where your</p> <p>21 company provided a list of potential replacement</p> <p>22 contractors to Lovett-Silverman?</p> <p>23 A. I don't have a recollection of that.</p> <p>24 Q. Do you ever recall seeing a document where</p>	<p>1 who drafted it and the development of it, I wasn't</p> <p>2 Involved.</p> <p>3 Q. Have you looked at the document in the last</p> <p>4 year?</p> <p>5 A. I believe so.</p> <p>6 Yes.</p> <p>7 Q. When have you looked at it?</p> <p>8 A. It's been within the last 12 months.</p> <p>9 Q. Do you know why you looked at it?</p> <p>10 A. I don't have that specific recollection.</p> <p>11 Q. What does the phrase "ratification" mean to</p> <p>12 you?</p> <p>13 A. My general understanding, as it is used in</p> <p>14 our business, is the form of agreement whereby a</p> <p>15 subcontractor generally would agree to fulfill the</p> <p>16 terms and conditions of its subcontract in an</p> <p>17 undertaking where the surety would agree to either</p> <p>18 undertake certain payments or certain obligations.</p> <p>19 Q. Does that word get used interchangeably</p> <p>20 with a hold agreement?</p> <p>21 A. They do appear to be used somewhat</p> <p>22 Interchangeably.</p> <p>23 Yes.</p> <p>24 Q. Could you walk me through a time line -- I</p>
Page 58	Page 60
<p>1 your company provided a list of replacement</p> <p>2 contractors that had been identified to the Town of</p> <p>3 Shrewsbury?</p> <p>4 A. I don't recall.</p> <p>5 Q. When your company brings in a replacement</p> <p>6 contractor, like Jackson, is there a formal</p> <p>7 agreement signed between your company and the</p> <p>8 replacement contractor?</p> <p>9 A. I would say that, as a matter of general</p> <p>10 practice, that usually happens.</p> <p>11 Yes.</p> <p>12 Q. Is it a formal agreement that's generally</p> <p>13 used?</p> <p>14 A. There are some samples of agreements, but</p> <p>15 they're not universally used or required.</p> <p>16 Q. Do you know, with regard to the Jackson</p> <p>17 agreement, who prepared that agreement?</p> <p>18 MR. HIPP: Objection as to form.</p> <p>19 Which Jackson agreement are you referring?</p> <p>20 MR. MELTZER: We're talking about</p> <p>21 the agreement to complete the work on the Shrewsbury</p> <p>22 Middle School.</p> <p>23 A. I can only comment that Tiffany Schaak was</p> <p>24 Involved in the process. But, as to specifically</p>	<p>1 realize you were not personally involved with this</p> <p>2 from the moment of failure on the Standen/Shrewsbury</p> <p>3 project -- but the time line as it transpired from</p> <p>4 the failure of Standen until the time the work was</p> <p>5 back up and running under Jackson, how that would</p> <p>6 all unfold?</p> <p>7 A. Is this with respect to Shrewsbury?</p> <p>8 Q. Yes.</p> <p>9 A. I have a general recollection of how</p> <p>10 Standen got into difficulty in the spring of 2005</p> <p>11 and that Jackson became involved within a relatively</p> <p>12 short period of time thereafter.</p> <p>13 Q. 2005 or 2004?</p> <p>14 A. I'm sorry. 2004.</p> <p>15 Yes. Spring of 2004.</p> <p>16 Q. At what point would Lovett-Silverman have</p> <p>17 been brought in on the Shrewsbury Middle School</p> <p>18 project?</p> <p>19 A. I don't have a specific recollection.</p> <p>20 Q. They'd have been brought in before Jackson</p> <p>21 was on the job?</p> <p>22 A. I could only say that I have a general</p> <p>23 understanding that they were involved in issues that</p> <p>24 followed Standen's default, but I don't recall</p>

16 (Pages 61 to 64)

Page 61	Page 63
<p>1 specifically when their responsibilities commenced.</p> <p>2 Q. If we had Standen failing, generally in the 3 spring of '04, and we know there is some kind of 4 document signed between your company and Jackson as 5 a replacement contractor, did Lovett-Silverman come 6 between the failure of Standen and the execution of 7 the agreement with Jackson?</p> <p>8 A. I don't recall when the agreement with 9 Lovett-Silverman was executed.</p> <p>10 Q. At some point would there have been a 11 process of ratifying the subcontractors on the 12 Shrewsbury Middle School project?</p> <p>13 A. Following the --</p> <p>14 Q. Standen defaulting.</p> <p>15 A. Yes.</p> <p>16 Q. Who would have been involved in the 17 ratification process?</p> <p>18 A. My general recollection is that Tiffany 19 Schaak and Jeremy Medeiros were involved. I have a 20 general understanding that representatives of 21 Lovett-Silverman would have been involved.</p> <p>22 And, to one extent or another, Russ Warner 23 would have had involvement in that process.</p> <p>24 Q. When the replacement contractor was brought</p>	<p>1 Which checkbook, which company would be the 2 checks that Jackson would receive or the replacement 3 contractor would generally receive for Shrewsbury 4 Middle School?</p> <p>5 A. In the case of the Shrewsbury Middle 6 School, payments made to Jackson were made by United 7 States Fidelity and Guaranty Company.</p> <p>8 Q. Was the Town of Shrewsbury at all involved 9 in the selection of Jackson as a replacement 10 contractor?</p> <p>11 A. I don't have any information concerning 12 whether they were involved or not.</p> <p>13 Q. Had you ever heard that they were involved?</p> <p>14 A. No.</p> <p>15 Q. Have you ever heard that their opinion was 16 solicited on the subject of bringing Jackson in on 17 that project?</p> <p>18 A. I don't know.</p> <p>19 Q. Do you know if at all the town was involved 20 in the ratification process following the failure of 21 Standen on the subcontractors?</p> <p>22 A. Not that I'm aware of.</p> <p>23 No.</p> <p>24 Q. Do you recall ever seeing any documentation</p>
<p>1 in on a project like this, following a performance 2 bond obligation, would the replacement contractor 3 also sign a contract of any kind with the warding 4 authority; in this case, the Town of Shrewsbury?</p> <p>5 A. The circumstances would vary in each of 6 these instances.</p> <p>7 In the case of the Shrewsbury Middle 8 School, it's my recollection that Jackson did not 9 sign an agreement directly with the Town of 10 Shrewsbury to the best of my knowledge.</p> <p>11 Q. They had an agreement with Travelers or 12 some portion of Travelers as the replacement 13 contractor?</p> <p>14 A. That's correct.</p> <p>15 Q. Who at Jackson submitted requisitions and 16 monthly bills to when they receive them from 17 subcontractors?</p> <p>18 A. My general recollection is that there was a 19 process of exchanging pencil copies of the 20 applications with the Shrewsbury architect and that 21 copies of those requisitions would generally be 22 shared with the United States Fidelity and Guaranty 23 Company.</p> <p>24 Q. Who would actually write the checks?</p>	<p>1 from the Town of Shrewsbury to the surety 2 identifying specific subcontractors that the town 3 would prefer not be ratified following the failure 4 of Standen?</p> <p>5 A. No.</p> <p>6 Q. Do you recall seeing any documents 7 submitted to your company from the project architect 8 identifying certain subcontractors that should not 9 be ratified on this particular project?</p> <p>10 A. No.</p> <p>11 Q. Have you ever seen a situation where either 12 an awarding authority or an architect, following the 13 failure of a general contractor, requested that 14 specific contractors not be retained?</p> <p>15 A. Not that I recall.</p> <p>16 Q. Do you recall seeing any documentation from 17 Lovett-Silverman to your company identifying 18 specific subcontractors that in Lovett-Silverman's 19 opinion should not be ratified after the Standen 20 failure?</p> <p>21 A. No.</p> <p>22 Q. I'm going to show you a document that we've ever 23 marked as Exhibit 78 prior and ask if you've ever seen that document?</p>

19 (Pages 73 to 76)

Page 73	Page 75
<p>1 company?</p> <p>2 A. Not that I understand. No.</p> <p>3 Q. Did it come as a surprise to you personally</p> <p>4 when Jackson failed?</p> <p>5 A. Yes.</p> <p>6 Q. How did you learn that Jackson was failing?</p> <p>7 A. By observation of their performance on the</p> <p>8 Shrewsbury project and by virtue of the</p> <p>9 notifications, which we had received from various</p> <p>10 subcontractors or suppliers, concerning their</p> <p>11 failure to make timely payments.</p> <p>12 Q. How many notifications did the surety</p> <p>13 receive about failure to make payments?</p> <p>14 A. I don't recall.</p> <p>15 Q. Was there a particular individual at your</p> <p>16 company that was assigned the Jackson matters?</p> <p>17 A. In what capacity?</p> <p>18 Q. Handling claims that were coming in during</p> <p>19 that time frame, before their failure in 2005?</p> <p>20 A. With respect to the Standen matter?</p> <p>21 Q. Matters in general.</p> <p>22 A. I guess I could respond to your question</p> <p>23 this way: To the extent that there were claims that</p> <p>24 pertained to Jackson and its role on the two Standen</p>	<p>1 to be in default and terminating their contracts on</p> <p>2 Shrewsbury and Westford.</p> <p>3 Q. Do you have any personal knowledge how many</p> <p>4 bonded jobs Jackson was performing at the time of</p> <p>5 their failure, bonded by your company?</p> <p>6 A. No.</p> <p>7 Q. Do you have any range?</p> <p>8 A. No.</p> <p>9 Q. You said that you had observed in their</p> <p>10 performance that they were failing.</p> <p>11 What did you observe?</p> <p>12 A. The general observation was that the</p> <p>13 progress on the completion of the Shrewsbury and the</p> <p>14 Westford projects had slowed and the project owner</p> <p>15 increasingly was expressing concerns about their</p> <p>16 failure to complete the project.</p> <p>17 Q. The project owner being Town of Shrewsbury</p> <p>18 in our case?</p> <p>19 A. Yes.</p> <p>20 Q. Who would the project owner be complaining</p> <p>21 to or expressing discontent to or concerns to your</p> <p>22 company?</p> <p>23 A. To me.</p> <p>24 Q. Who would you be in contact with from the</p>
<p>1 projects, I would have been the primary person.</p> <p>2 And to the extent that there were claims</p> <p>3 that were presented, that pertained to other</p> <p>4 projects of Jackson, that there would be others</p> <p>5 within the Travlers bond operations that would have</p> <p>6 handled those matters.</p> <p>7 Q. Do you know who those individuals would</p> <p>8 have been?</p> <p>9 A. I have a recollection that they would have</p> <p>10 included Tom McAuley and Gordon Patterson.</p> <p>11 Q. Would there be any kind of regular</p> <p>12 communication between you and either of those two</p> <p>13 individuals, Gordon and Tom, about Jackson and the</p> <p>14 impact of their failure on each other's projects?</p> <p>15 A. I wouldn't characterize it as regular</p> <p>16 communication.</p> <p>17 No.</p> <p>18 Q. Would there be an informal group within</p> <p>19 your company of people that were dealing in various</p> <p>20 ways with Jackson that would be addressing a</p> <p>21 cross-disciplinary ad hoc committee on Jackson's</p> <p>22 failure?</p> <p>23 A. There was communication between us around</p> <p>24 the time that we were considering declaring Jackson</p>	<p>1 part of the owner?</p> <p>2 A. The town manager. His name is Dan Morgado.</p> <p>3 Q. How often would you talk to Dan Morgado?</p> <p>4 A. I don't have a specific recollection as to</p> <p>5 the frequency.</p> <p>6 Q. Did you communicate with him by email?</p> <p>7 A. I don't have a specific recollection.</p> <p>8 Q. What kind of comments was he making to you</p> <p>9 about the performance of Jackson?</p> <p>10 A. I just have a general recollection of him</p> <p>11 expressing concern about the failure of Jackson to</p> <p>12 timely complete the project.</p> <p>13 Q. How often were you going down to the</p> <p>14 Shrewsbury Middle School in 2005?</p> <p>15 A. I have a recollection of at least two to</p> <p>16 three visits during the spring or summer of 2005.</p> <p>17 There might have been more occasions, but I</p> <p>18 don't remember. I remember at least on a couple of</p> <p>19 occasions being there.</p> <p>20 Q. Who would you meet with when you went down</p> <p>21 there?</p> <p>22 A. I recall an initial meeting that just</p> <p>23 included Russ Warner. There may have been others</p> <p>24 but none come to mind.</p>

28 (Pages 109 to 112)

Page 109	Page 111
1 matter.	1 Q. Did you ever speak to anybody at Jackson
2 Q. Did you ever discuss the Hull High School	2 about the quality of Landworks work?
3 matter with Gordon Patterson?	3 A. I have a general recollection of having had
4 A. My only recollection is that there was a	4 some conversations with Bob Barton about Landworks,
5 storm and some severe damage to the roof that	5 but I don't recall the substance of whether the
6 occurred at some point in that general time frame.	6 substance of those conversations focused on quality
7 I was wasn't involved in the specifics of	7 of the work.
8 the claim handler.	8 Q. Do you recall in the spring or summer of
9 Q. I want to clarify: There was no particular	9 2005 hearing anybody, in any capacity, specifically
10 written policy that stated that Lovett-Silverman was	10 identifying Landworks as a problem subcontractor?
11 barred from communicating with Landworks as a matter	11 A. I have a general recollection of having had
12 of surety policy?	12 some conversations with Bob Barton about Landworks
13 A. Not that I'm aware of.	13 not having a continuing presence on the project and
14 No.	14 that there were some payment issues.
15 Q. Did you ever tell anybody at	15 Q. Was that unique to Landworks on this job?
16 Lovett-Silverman that a subcontractor could not be	16 A. The issue of continuing presence was not
17 ratified while litigation was in process?	17 something that was necessarily shared by a number of
18 A. No. I don't have a specific recollection	18 other subcontractors.
19 of that.	19 The issue of some payment issues was
20 Q. Are you aware of any instances in which a	20 something that was more widespread.
21 subcontractor was ratified even though litigation	21 Q. Amongst numerous subcontractors?
22 had already commenced against the surety?	22 A. Yes.
23 A. I have a general recollection that	23 Q. Would having payment issues with Jackson a
24 arrangements were made that led to a ratification	24 bar to ratification following a default of Jackson?
Page 110	Page 112
1 that included the reaching of a resolution of the	1 A. No.
2 litigation.	2 Q. Was there any kind of policy that stated
3 Q. Was there any kind of written policy that	3 that having a payment problem with a prior
4 stated once litigation commenced the surety could	4 contractor would constitute a bar to ratification?
5 not consider that party for ratification?	5 A. No.
6 A. Not that I'm aware of.	6 Q. Have you heard of any subcontractors on
7 No.	7 this project who declined to return to the site
8 Q. Do you recall ever attending any kind of	8 pending payment issues?
9 event sponsored by the surety in which that was	9 A. Yes. I have a general recollection of
10 stated to be the company policy?	10 that.
11 A. No.	11 Q. Do you know if any subcontractors did not
12 Q. When you first became involved in the	12 return or declined to come to the job because of
13 project at the Shrewsbury Middle School, in the	13 payment issues?
14 spring of 2005, did anybody from the town	14 A. Yes.
15 specifically state any reservations about ratifying	15 Q. Do you know who those were?
16 Landworks?	16 A. I have a general recollection that Century
17 A. Not that I recall.	17 Drywall was an instance where there was some payment
18 Q. How about from the architect specifically	18 issues, and we were unable to realize a
19 as to Landworks?	19 reconciliation of their claims and their
20 A. Not that I recall.	20 subcontract.
21 Q. How about from CTM?	21 Q. Any others?
22 A. Not that I recall.	22 A. I don't recall specific names.
23 Q. Waterman Design?	23 Q. How many subcontractors on the Shrewsbury
24 A. Not that I recall.	24 Middle School have filed suit against USF&G seeking

29 (Pages 113 to 116)

Page 113	Page 115
1 payment under the bond?	1 Q. And that's in suit?
2 A. A little bit over 20.	2 A. It was.
3 Q. Have filed suit?	3 Well, I'm not certain of the current status
4 A. Yes.	4 of that.
5 Q. In Shrewsbury Middle School or in general?	5 Q. Who else?
6 A. In connection with the Shrewsbury Middle	6 A. I don't recall any other names.
7 School.	7 Q. How about K&K?
8 That would include in connection with	8 A. The name sounds familiar, but I can't put
9 Standen's default and Jackson's default.	9 it into context.
10 Q. Can you identify as many of those as you	10 Q. How about KMD?
11 can and whether they are Standen or Jackson	11 A. I recall them as a subcontractor. I don't
12 defaults?	12 recall that there was litigation involved.
13 A. I don't know that I would parse them out as	13 Q. How about a floor subcontractor?
14 between Standen and Jackson.	14 A. I don't recall if there was litigation
15 Q. Can you do them by trade?	15 involving a flooring subcontractor.
16 A. Coughlin Electric.	16 Q. How about Steelco?
17 Q. They were the electrician, Division 15, on	17 A. Steelco did bring an action.
18 this project?	18 Q. Is there others you can't recall?
19 A. They were the electrician.	19 A. I presume so. Yes.
20 Q. They actually filed suit?	20 Q. Were all these matters being presented by
21 A. Yes. That's my recollection.	21 the same counsel for USF&G?
22 Q. Who else?	22 A. No.
23 A. Escoa.	23 Q. What law firms were being used to defend
24 Q. Also an electrician?	24 these matters?
Page 114	Page 116
1 A. Yes.	1 A. Some were being represented by Hermes,
2 Q. They filed suit?	2 Netburn, O'Connor, and Spearing.
3 A. Yes.	3 Some were represented by Little, Medeiros,
4 Q. Who else?	4 Kinder, Pulman, and Whitney.
5 A. Landworks.	5 At some point Hinshaw & Culbertson
6 Q. Who else?	6 represented us in one or more of those actions.
7 A. Kittridge Equipment.	7 Q. Anyone else?
8 Q. Do you know what they provided?	8 A. None that come to mind.
9 A. Kitchen equipment. Cafeterias.	9 Q. Is Little Medeiros still doing work for the
10 Q. They filed suit?	10 surely on defending cases involving Massachusetts
11 A. Yes.	11 public school projects?
12 Q. Who else?	12 A. Yes.
13 A. Century Drywall.	13 Q. How about Hinshaw Culbertson?
14 Q. That's in suit in Worcester now; correct?	14 A. Does your question deal with active cases?
15 A. That's in suit. I'm not certain of the	15 Q. Yes. Active cases.
16 venue.	16 A. I don't have a recollection of any active
17 Q. Who else?	17 cases that they have.
18 A. Daddario.	18 Q. Little Medeiros still has active cases?
19 Q. Plumbing?	19 A. In connection with the Standen matter?
20 A. I don't recall their scope.	20 Q. How about in general?
21 Q. Did they also file suit?	21 Are they still representing USF&G in
22 A. Yes.	22 Massachusetts?
23 Q. Who else?	23 A. Hinshaw Culbertson?
24 A. Allstate Steel.	24 Q. Yes.

30 (Pages 117 to 120)

Page 117	Page 119
1 A. Yes, they are.	1 sent over from Cetrulo & Capone to Hinshaw
2 Q. Little Medeiros is still representing USF&G	2 Culbertson?
3 in Massachusetts as well?	3 A. Yes.
4 A. In certain Standen-related matters.	4 Q. Were you part of that decision to make that
5 Q. Who makes a determination of which law firm	5 change?
6 is representing a surety in any particular case in	6 A. Yes.
7 the Commonwealth?	7 Q. Why was that change made?
8 A. The determination is generally made by the	8 MR. HIPP: Objection.
9 assigned claim manager, manager or attorney, as the	9 Attorney-client privilege.
10 case may be.	10 MR. MELTZER: Same motion to
11 Q. At the Shrewsbury Middle School who would	11 compel.
12 have made that determination?	12 Q. (By Mr. Meltzer) At some point was this
13 A. At what time?	13 matter then sent over to Hermes Netburn?
14 Q. In 2005.	14 A. Yes.
15 A. During the time that I was involved, I	15 Q. Were you part of that decision to shift
16 would have been involved in the counsel selection	16 that matter as well?
17 decisions.	17 A. Yes.
18 Q. Would you have been involved in the	18 Q. Tell me why you made that determination?
19 determination to send this matter to Little Medeiros	19 MR. HIPP: Objection based on
20 when the case was filed by Landworks?	20 attorney-client privilege.
21 A. No, I was not.	21 MR. MELTZER: Move to compel that
22 Q. Were you involved when the matter was	22 one as well.
23 shifted to Cetrulo & Capone?	23 Q. (By Mr. Meltzer) Would it be common in a
24 A. Either Cetrulo & Capone or Hinshaw	24 lawsuit involving the surety in Massachusetts, in
Page 118	Page 120
1 Culbertson. I don't recall when Mr. Carver changed	1 2005, for a case to be handled by four different law
2 firms.	2 firms?
3 Q. Do you recall being involved in that	3 A. I think the answer to that question depends
4 decision to transfer the matter away from Little	4 on the circumstances of the particular case.
5 Medeiros?	5 Q. On the Shrewsbury Middle School, how many
6 A. Yes.	6 of these cases were handled by four different law
7 Q. Do you know why that determination was	7 firms within an eight-month period?
8 made?	8 A. This is the only one that I know of.
9 MR. HIPP: Objection.	9 Q. Are you aware that this case was originally
10 MR. MELTZER: Are you instructing	10 filed in the Worcester Superior Court?
11 him not to answer?	11 A. That's my general understanding.
12 MR. HIPP: Yeah. You're getting	12 Q. You know that at some point it was removed
13 into attorney-client issues.	13 to the U.S. District Court?
14 MR. MELTZER: If you instruct him	14 A. Yes.
15 not to answer, I'll move to compel the answer to	15 Q. Can you tell me why the determination was
16 that.	16 made to move the case to the United States District
17 Q. (By Mr. Meltzer) Can you tell me why	17 Court?
18 Cetrulo & Capone was selected as replacement	18 MR. HIPP: Objection on the basis
19 counsel?	19 of attorney-client privilege.
20 MR. HIPP: Objection for the same	20 MR. MELTZER: Move to compel on
21 reason.	21 that one as well.
22 MR. MELTZER: Same motion to	22 Q. (By Mr. Meltzer) How many cases involving
23 compel.	23 the Shrewsbury Middle School were removed to the
24 Q. (By Mr. Meltzer) Was this matter ultimately	24 U.S. District Court?

31 (Pages 121 to 124)

Page 121	Page 123
<p>1 A. I don't recall.</p> <p>2 Q. Can you think of any others involving the</p> <p>3 Shrewsbury Middle School that have been moved to the</p> <p>4 U.S. District Court?</p> <p>5 A. I don't recall.</p> <p>6 (A brief recess was taken.)</p> <p>7 Q. (By Mr. Meltzer) Was there any kind of</p> <p>8 formal policy at the surety that determined how</p> <p>9 counsel was selected to represent the surety in any</p> <p>10 given case?</p> <p>11 A. The decision is wanted to be made by the</p> <p>12 assigned claim attorney or manager.</p> <p>13 Generally, the expectation is that the</p> <p>14 claim attorney or counsel will utilize counsel on</p> <p>15 what we would identify to be our list of panel</p> <p>16 counsel, which are attorneys that are generally</p> <p>17 cleared to represent us.</p> <p>18 But there are some exceptions to that</p> <p>19 general practice.</p> <p>20 Q. Is there any policy to explain why a case</p> <p>21 will be moved from attorney to attorney in the same</p> <p>22 case?</p> <p>23 A. That would be something that would be</p> <p>24 dictated by the claim manager or attorney's</p>	<p>1 site for a number of months.</p> <p>2 The site work, which was the subject of</p> <p>3 their original subcontract responsibilities, was an</p> <p>4 issue that had some urgency associated with it and</p> <p>5 efforts were being made to identify other</p> <p>6 alternatives for completion of that work about the</p> <p>7 same time that Landworks contacted Lovett-Silverman.</p> <p>8 Q. How did you determine that they had been</p> <p>9 absent from the project for a length of time?</p> <p>10 A. That was my general understanding from what</p> <p>11 I recall from discussions with Bob Barton of Jackson</p> <p>12 Construction Company.</p> <p>13 Q. What period of time were those absences</p> <p>14 occurring?</p> <p>15 A. My general understanding is that there had</p> <p>16 not been a presence roughly after the first of the</p> <p>17 year 2005 through the summer months when we issued</p> <p>18 Jackson's default and termination.</p> <p>19 Q. Were there other subcontractors who were</p> <p>20 absent during that time frame; in the spring,</p> <p>21 early-summer of 2005?</p> <p>22 A. I don't recall.</p> <p>23 Q. Have you heard that Landworks did not</p> <p>24 return to the site because of nonpayment of their</p>
<p>1 evaluation of the particulars of that circumstance.</p> <p>2 Q. Other than the Landworks case, can you</p> <p>3 recall any other cases that you've been involved in,</p> <p>4 in the last two years, that have had four different</p> <p>5 law firms representing the surety within an</p> <p>6 eight-month period?</p> <p>7 A. No.</p> <p>8 Q. Is there any formal policy within the</p> <p>9 surety that explains when a case should be removed</p> <p>10 for a state to a federal court?</p> <p>11 A. Not that I'm aware of.</p> <p>12 Q. Do you know why Landworks was not ratified</p> <p>13 in this case?</p> <p>14 MR. HIPP: Objection as to form.</p> <p>15 I assume you're referring to after the</p> <p>16 Jackson default.</p> <p>17 MR. MELTZER: Yes.</p> <p>18 A. I don't have a specific recollection as to</p> <p>19 why Landworks was not ratified but would respond to</p> <p>20 your question in this way: At the time that we were</p> <p>21 — our consultant, Lovett-Silverman, had been</p> <p>22 contacted by Landworks with an expression of</p> <p>23 interest to become ratified, we had identified them</p> <p>24 as a contractor who had been absent from the project</p>	<p>1 Invoices?</p> <p>2 A. I had heard that there were some issues</p> <p>3 with respect to payment. As to why they did not</p> <p>4 return to the site, I don't have a specific</p> <p>5 recollection.</p> <p>6 Q. Had you ever heard that Landworks had left</p> <p>7 the site due to winter conditions?</p> <p>8 A. I don't have that recollection.</p> <p>9 Q. Other than Bob Barton saying there had been</p> <p>10 absences during the time frame from the beginning of</p> <p>11 2005 through the summer, are there any other reasons</p> <p>12 that you've heard why Landworks was not ratified?</p> <p>13 MR. HIPP: Objection as to form.</p> <p>14 A. My general understanding is that they</p> <p>15 hadn't been evident on the project site and, as a</p> <p>16 consequence, their work was not being maintained.</p> <p>17 I had the general understanding that</p> <p>18 Jackson was considering engaging the services of</p> <p>19 another site work contractor in the early part of</p> <p>20 the summer to take up and to complete the work that</p> <p>21 was within Landworks' subcontract.</p> <p>22 Q. Did you ever see any correspondence from</p> <p>23 Landworks, in the spring of 2005, indicating that</p> <p>24 they were ready, willing, and able to return to work</p>

35 (Pages 137 to 140)

Page 137	Page 139
<p>1 A. This is a pleading that was prepared by 2 attorneys.</p> <p>3 Q. Does that reflect your understanding of 4 what's in the subcontract between Landworks and 5 Standen?</p> <p>6 A. It's a paraphrase of their subcontract that 7 conforms with my general understanding.</p> <p>8 Q. Paragraph 10, On or about April 29, 2004, 9 Landworks entered into a subcontract with Jackson. 10 See that reference?</p> <p>11 A. Yes.</p> <p>12 Q. When did you first see that subcontract?</p> <p>13 A. I don't recall.</p> <p>14 Q. Did you ever discuss the terms of that 15 subcontract with Jackson, anybody at Jackson?</p> <p>16 A. I don't recall.</p> <p>17 Q. Do you recall ever having a conversation 18 with anybody from Jackson in which you Inquired 19 about the scope of Landworks' responsibilities on 20 this project?</p> <p>21 A. I don't recall.</p> <p>22 Q. Did you ever have that kind of conversation 23 .with anybody from Standen?</p> <p>24 A. No.</p>	<p>1 attorney-client privilege.</p> <p>2 You can answer if it's to the extent of 3 your own personal knowledge and not attorney-client 4 communications.</p> <p>5 A. The Information would have come to me 6 through our attorneys and would require me to 7 disclose information of that nature.</p> <p>8 Q. Are you aware of any statutory provisions 9 in Massachusetts law that limit when site work can 10 be performed in the Commonwealth due to seasonal 11 constraints?</p> <p>12 MR. HIPP: Same objection on 13 attorney-client privilege.</p> <p>14 You can answer to the extent you have your 15 own personal knowledge.</p> <p>16 A. I don't have a recollection of a 17 Commonwealth of Massachusetts statute.</p> <p>18 No.</p> <p>19 Q. Are you aware of any industry standards 20 that dictate when certain site work can be performed 21 in the Commonwealth of Massachusetts due to seasonal 22 restraints?</p> <p>23 A. I'm not aware of a specific industry 24 standard.</p>
<p>Page 138</p> <p>1 Q. Did you ever instruct anybody at 2 Lovett-Silverman to have a conversation with Jackson 3 to ascertain Jackson's understanding of the 4 subcontract?</p> <p>5 A. I don't recall.</p> <p>6 Q. During the time frame early-2005 was 7 anybody at the surety still in contact with anybody 8 from Standen?</p> <p>9 A. Repeat the question.</p> <p>10 (Last question read back.)</p> <p>11 A. Not other than through counsel.</p> <p>12 Q. Was any effort made through counsel to 13 ascertain the scope of Landworks' scope with Standen 14 with the Shrewsbury Middle School project?</p> <p>15 MR. HIPP: Objection on the basis 16 of attorney-client privilege.</p> <p>17 MR. MELTZER: Move to compel.</p> <p>18 Q. (By Mr. Meltzer) Moving down to paragraph 19 11, Landworks abandoned its work at the project in 20 the fall of 2004.</p> <p>21 Did I read that correctly?</p> <p>22 A. Yes.</p> <p>23 Q. Tell me what that's based upon?</p> <p>24 MR. HIPP: Same objection on</p>	<p>Page 140</p> <p>1 No.</p> <p>2 Q. How about any ordinance in the Town of 3 Shrewsbury?</p> <p>4 A. I'm not aware of en ordinance in the Town 5 of Shrewsbury.</p> <p>6 Q. Have you ever heard the term "winter 7 shutdown"?</p> <p>8 A. In general terms, yes.</p> <p>9 Q. What does that mean?</p> <p>10 A. It would typically refer to activities that 11 were not to be performed due to the reasons that 12 would have to do with the climate.</p> <p>13 Q. What kind of work?</p> <p>14 A. Typically exterior work.</p> <p>15 Q. Site work?</p> <p>16 A. Yes.</p> <p>17 Q. Do you know if there was any winter 18 shutdown provisions at the Shrewsbury Middle School 19 project for site work?</p> <p>20 A. I have a recollection that there was some 21 restrictions on the time period within which seeding activity could be undertaken.</p> <p>22 Q. How about paving activity?</p> <p>23 A. I don't have a specific recollection.</p>

42 (Pages 165 to 168)

Page 165	Page 167
<p>1 Should we pursue this guy?</p> <p>2 I know you have issues with him.</p> <p>3 Do you recall seeing this email?</p> <p>4 A. I don't have an independent recollection, other than from this.</p> <p>5 Q. As you sit here today, do you know whether Russ had issues with the president of Landworks?</p> <p>6 A. The only issues that I'm aware of were the existence of the litigation.</p> <p>7 There may be other issues that were in his mind, but I would only be speculating.</p> <p>8 Q. Did you have any discussions with Russ Fuller about what those issues were?</p> <p>9 A. I only have a general recollection of having discussed this situation with Russ Fuller.</p> <p>10 But I don't have a specific recollection of the particular conversations.</p> <p>11 Q. In terms of the issues, plural, as you sit here today, even though you're CC'd on this -- actually, you're a direct recipient -- you don't know what that refers to?</p> <p>12 A. The only thing that I would be in a position to respond to specifically was the existence of the litigation.</p>	<p>1 Do you recall seeing this email?</p> <p>2 A. Yes.</p> <p>3 Q. When did you first see this email?</p> <p>4 A. I don't know that I could pin a date on it. My general recollection is that it was a document that was identified during the course of discovery of Lovett-Silverman's business records and it was brought to my attention after that.</p> <p>5 Q. You had a chance to read this email?</p> <p>6 A. Yes, I have.</p> <p>7 Q. You saw the language at the bottom that says, We can try to bang the subs, but I think that we can never recover from them what we are spending.</p> <p>8 See that reference?</p> <p>9 A. Yes.</p> <p>10 Q. In fact, at the top of that paragraph it actually talks about site work; correct?</p> <p>11 A. Among other things, yes.</p> <p>12 Q. Do you know what it means to bang subs?</p> <p>13 A. I don't know what Mr. Falango meant by that.</p> <p>14 Q. Did you ever call up Al Falango and ask him what he meant by it?</p> <p>15 A. I remember having a conversation with him</p>
Page 166	Page 168
<p>1 Q. Would you expect your consultants to be respectful of subcontractors working on a public construction project?</p> <p>2 A. Yes.</p> <p>3 Q. Would it be respectful to refer to the president of a subcontractor as "this guy"?</p> <p>4 A. It's a choice of words that I probably wouldn't use myself, but I don't know that any disrespect is intended.</p> <p>5 Q. Take a look for a moment at No. 58. Same question: Looking at that first sentence, is that the kind of language you are accustomed to seeing for a consultant working for USF&G?</p> <p>6 MR. HIPP: Objection as to form.</p> <p>7 Which of the emails are you referring?</p> <p>8 MR. MELTZER: I'm referring to the top one. It says, Hi, Al. I just got back from my F-ing vacation.</p> <p>9 A. That's not something that I would normally expect to see.</p> <p>10 No.</p> <p>11 Q. Does that strike you as professional?</p> <p>12 A. Not particularly.</p> <p>13 Q. Look at No. 43 for a moment.</p>	<p>1 about it.</p> <p>2 Q. When was that conversation?</p> <p>3 A. After I had seen the email.</p> <p>4 Q. Why did you have a conversation with him about it?</p> <p>5 A. Because I wanted to understand more clearly what he was talking about and to express some disappointment in his choice of words.</p> <p>6 Q. Why disappointment?</p> <p>7 A. Because it appears to be the use of slang, which could be taken out of context.</p> <p>8 Q. Did he explain to you what he meant by that; we can try to bang the subs?</p> <p>9 A. My understanding was that he was talking about to identify instances where we had incurred costs or would incur costs to complete or to fix corrective -- to complete work or to correct defective work, which would be chargeable back to the account of the involved subcontractor.</p> <p>10 Q. That's what he said?</p> <p>11 A. In general terms, yes.</p> <p>12 Q. Do you recall when that conversation took place?</p> <p>13 A. Again, it was after I had seen the email.</p>

43 (Pages 169 to 172)

Page 169	Page 171
<p>1 Q. Do you know if Lovett-Silverman had already 2 been added as a party to this case, when you had 3 that conversation with him?</p> <p>4 A. I don't recall the time sequence.</p> <p>5 Q. Other than this reference in this email, 6 had you seen that phrase before?</p> <p>7 A. I don't have a recollection of seeing it.</p> <p>8 No.</p> <p>9 Q. Have you ever talked to anybody, other than 10 Al Falango, about what "bang the subs" means in the 11 construction industry in Massachusetts?</p> <p>12 A. I have a general recollection of talking 13 with John Lovett and Tony Lardaro about it.</p> <p>14 Q. Why did you talk to them about it?</p> <p>15 A. I wanted to make sure that they were aware 16 of the existence of this email and the use of the 17 language.</p> <p>18 Q. Would use of that language trouble you?</p> <p>19 A. Yes.</p> <p>20 Q. Why?</p> <p>21 A. Because it was, I thought, inappropriate 22 language to be used in connection with our business 23 matters.</p> <p>24 Q. Is it policy of USF&G to, quote, try to</p>	<p>1 with Standen in Massachusetts – in the Standen 2 case.</p> <p>3 Q. Other than the Standen ones, you're not 4 aware of any that they have commenced recently on 5 behalf of USF&G?</p> <p>6 A. Not that I have personal knowledge of.</p> <p>7 Q. Looking at the beginning part of that 8 bottom paragraph, where it says, I don't think the 9 825K is enough for the contingency. 10 Do you know what that means?</p> <p>11 A. I can only respond to your question this 12 way: Lovett-Silverman was tasked with developing 13 some estimated costs to complete. And this was an 14 effort to try to estimate what those costs would be.</p> <p>15 Q. Was it your understanding of USF&G or the 16 surety, when Lovett-Silverman started this job, that 17 Lovett-Silverman would bring this job in within the 18 original construction budget?</p> <p>19 A. Where are you –</p> <p>20 Q. In general, was it your expectation or the 21 expectation of the surety that Lovett-Silverman 22 would complete this job and bring it in within the 23 original construction budget?</p> <p>24 A. Lovett-Silverman wasn't tasked with the</p>
<p>1 bang subs?</p> <p>2 A. Whatever that means, it's not our policy.</p> <p>3 Q. Going to the second part where it talks 4 about, we can never recover from them what we are 5 spending, do you know what that means?</p> <p>6 A. I can't put myself in the mind of Al 7 Falango. I can only tell you what inference I would 8 draw from it.</p> <p>9 Q. What inference would you draw from that?</p> <p>10 A. That the costs that were being incurred, 11 that would be subject to back charge, subcontractors 12 would not be able to be recovered out of the 13 remaining contract balances on those subcontracts.</p> <p>14 Q. What was John Lovett's reaction to your 15 communication with him about this language?</p> <p>16 A. My general understanding is that he shared 17 my concern.</p> <p>18 Q. Is USF&G continuing to do business with 19 Lovett-Silverman in Massachusetts?</p> <p>20 A. Yes.</p> <p>21 Q. What's the most recent project they've 22 commenced for USF&G or the surety in general?</p> <p>23 A. I don't have a recollection of any 24 projects, other than the ones where they're involved</p>	<p>1 responsibility of completing the project, so they 2 couldn't have done something within a budget. It 3 wasn't their responsibility.</p> <p>4 Q. Any idea why there was concern then about 5 whether the 825K is enough?</p> <p>6 A. We had asked them to give us information 7 about the estimated cost to complete, in order to 8 establish our loss reserves for this particular 9 matter.</p> <p>10 Q. Is there a policy at the surety for 11 awarding this kind of outside consulting work to 12 construction consultants who bring in the best work 13 for the least money?</p> <p>14 A. No.</p> <p>15 Q. Was that kind of statement ever made to 16 Lovett-Silverman?</p> <p>17 A. Not that I'm aware of.</p> <p>18 Q. Can you tell me what you did in preparation 19 for this deposition today to be ready for this?</p> <p>20 MR. HIPP: Objection on the basis 21 of attorney-client privilege.</p> <p>22 Q. (By Mr. Meltzer) Other than communicating 23 with your attorney?</p> <p>24 A. If I can respond –</p>

EXHIBIT B

1 (Pages 1 to 4)

	Page 1		Page 3
1	Volume I Pages 1 - 138	1	INDEX
2	UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS CENTRAL DIVISION C.A. No. 05-CV-40072 FDS	2	Testimony of: Direct Cross Redirect Recross
3	LANDWORKS CREATIONS, LLC. Plaintiff, vs.	3	KATHRYN CROCKETT
4	UNITED STATES FIDELITY AND GUARANTY COMPANY and LOVETT-SILVERMAN CONSTRUCTION CONSULTANTS, INC., Defendants.	4	by Mr. Meltzer 5
5	*****	5	
6	DEPOSITION of KATHRYN CROCKETT, called as a witness by counsel for the Plaintiff, pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Norma Flynn Borelli, CSR No. 102783, Registered Professional Reporter and Notary Public to and for the Commonwealth of Massachusetts, taken at the offices of THE MOUNTAIN STATES LAW GROUP, 180 Speen Street, Framingham, Massachusetts, on Wednesday, January 10, 2007, at 9:10 AM.	6	EXHIBITS
7	*****	7	Exhibit No. Description For I.D.
8	FLYNN REPORTING ASSOCIATES Professional Court Reporters One Exchange Place Worcester, Massachusetts 01608 (508) 755-1303 • (817) 536-2727 TOLL FREE: (888) 244-8858 FAX: (508) 752-4611	1	Under Drainage Document 39
9	*****	2	Storm Drainage Document 41
10		3	Water Systems Document 41
11		4	Irrigation Document 43
12		5	Site Improvements Document 44
13		6	E-Mail dated 6/8/05 81
14		7	Memo dated 10/10/01 84
15		8	Letter dated 12/30/02 88
16		9	Letter dated 10/14/04 89
17		10	Letter dated 9/26/05 93
18		11	E-Mail dated 10/6/05 95
19		12	Letter dated 8/26/04 97
20		13	Letter dated 11/04/04 100
21		14	Letter dated 2/2/05 102
22		15	Alternate No. 5 103
23		16	E-Mail dated 11/5/04 109
24		17	Letter dated 10/4/04 110

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1	THE MOUNTAIN STATES LAW GROUP Robert N. Meltzer, Esq. 160 Speen Street, SU 307 P.O. Box 1459 Framingham, Massachusetts 01701 for the Plaintiff.	1	CONTINUED:
2	HERMES, NETBURN, O'CONNOR & SPEARING BY: Eric C. Hipp, Esq. 265 Franklin Street Boston, Massachusetts 02109 for the Defendant/United States Fidelity and Guaranty Company.	2	18 Estimate 112
3	DONOVAN & HATEM LLP BY: Julie A. Ciollo, Esq. Two Seaport Lane Boston, Massachusetts 02210 for the Defendant/Lovett-Silverman Construction Consultants, Inc.	3	19 Letter of Transmittal 112
4	POJANI, HURLEY, RITTER & SALVIDIO, LLP BY: William J. Ritter, Esq. 448 Main Street, 21st Floor Worcester, Massachusetts 01608 for the Deponent.	4	20 Letter of Transmittal 113
5	ALSO PRESENT: Neal Matthews	5	21 Letter dated 10/24/05 114
6		6	22 Letter dated 12/6/05 115
7		7	23 Construction Meeting #107 119
8		8	24 Construction Meeting #103 120
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10		10	26 Oak Middle School Completion Game Plan 125
11		11	
12		12	27 Status of Project 126
13		13	28 E-Mail dated 12/8/04 130
14		14	29 E-Mail dated 6/30/04 131
15		15	30 E-Mail dated 2/27/04 132
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17		17	
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21		21	** EXHIBITS RETAINED BY ATTORNEY MELTZER **
22		22	
23		23	
24		24	

34 (Pages 133 to 136)

EXHIBIT C

1 (Pages 1 to 4)

Page 1	Page 3
<p>Volume I Pages 1 - 53</p> <p>UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS CENTRAL DIVISION C.A. No. 05-CV-40072 FDS</p> <p>LANDWORKS CREATIONS, LLC. Plaintiff, v. UNITED STATES FIDELITY AND GUARANTY COMPANY and LOVETT-SILVERMAN CONSTRUCTION CONSULTANTS, INC., Defendants.</p> <p>*****</p> <p>DEPOSITION of WILLIAM A. MERITZ, called as a witness by counsel for the Plaintiff, pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Norma Flynn Borelli, CSR No. 102793, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, taken at the offices of THE MOUNTAIN STATES LAW GROUP, 160 Speen Street, Framingham, Massachusetts, on Thursday, January 11, 2007, at 11:20 AM.</p> <p>*****</p> <p>FLYNN REPORTING ASSOCIATES Professional Court Reporters One Exchange Place Worcester, Massachusetts 01608 (508) 755-1303 • (617) 538-2727 TOLL FREE: (888) 244-8858 FAX: (508) 752-4611</p> <p>*****</p>	<p>1 INDEX</p> <p>2 Testimony of: Direct Cross Redirect Recross</p> <p>3 WILLIAM A. MERITZ</p> <p>4 by Mr. Meltzer 4</p> <p>5 EXHIBITS</p> <p>6 Exhibit No. Description For I.D.</p> <p>7 44 E-Mail dated 8/22/05 20</p> <p>8 45 E-Mail dated 9/08/05 22</p> <p>9 46 E-Mail dated 9/15/05 26</p> <p>10 47 E-Mail dated 9/15/05 28</p> <p>11 48 E-Mail dated 9/26/05 33</p> <p>12 49 E-Mail dated 10/5/05 39</p> <p>13 50 E-Mail dated 11/4/05 41</p> <p>14 51 E-Mail dated 1/16/06 45</p> <p>15 52 E-Mail dated 1/25/06 46</p> <p>16 53 E-Mail dated 2/1/06 49</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 ** EXHIBITS RETAINED BY ATTORNEY MELTZER **</p> <p>24</p>
Page 2	Page 4
<p>2</p> <p>3 THE MOUNTAIN STATES LAW GROUP</p> <p>4 Robert N. Meltzer, Esq.</p> <p>5 160 Speen Street, SU 307</p> <p>6 P.O. Box 1459</p> <p>7 Framingham, Massachusetts 01701</p> <p>8 for the Plaintiff.</p> <p>9 HERMES, NETBURN, O'CONNOR & SPEARING</p> <p>10 BY: Eric C. Hipp, Esq.</p> <p>11 265 Franklin Street</p> <p>12 Boston, Massachusetts 02109</p> <p>13 for the Defendant/United States Fidelity</p> <p>14 and Guaranty Company.</p> <p>15 DONOVAN & HATEM LLP</p> <p>16 BY: Marianne E. Brown, Esq.</p> <p>17 Two Seaport Lane</p> <p>18 Boston, Massachusetts 02210</p> <p>19 for the Defendant/Lovett-Silverman</p> <p>20 Construction Consultants, Inc.</p> <p>21 ALSO PRESENT:</p> <p>22 Neal Matthews</p>	<p>1 STIPULATIONS</p> <p>2 It is stipulated by and between</p> <p>3 counsel for the respective parties that the</p> <p>4 deposition transcript will be read and signed by the</p> <p>5 deponent within forty-five (45) days of receipt of</p> <p>6 transcript under the pains and penalties of perjury.</p> <p>7 The filing and the notarization are hereby waived.</p> <p>8 It is further agreed that all</p> <p>9 objections, except as to the form of the question,</p> <p>10 and motions to strike, are reserved until the time</p> <p>11 of trial.</p> <p>12 WILLIAM A. MERITZ, having been</p> <p>13 satisfactorily identified and duly sworn</p> <p>14 by the Notary Public, was examined and</p> <p>15 testified as follows:</p> <p>16 DIRECT EXAMINATION</p> <p>17 BY MR. MELTZER:</p> <p>18 Q. Would you state your name for the record?</p> <p>19 A. William A. Meritz.</p> <p>20 Q. Mr. Meritz, have you ever been deposed</p> <p>21 before?</p> <p>22 A. No.</p> <p>23 Q. Okay. My name is Rob Meltzer. I am an</p> <p>24 attorney for Landworks, a plaintiff in this case</p>

12 (Pages 45 to 48)

Page 45	Page 47
<p>1 (Exhibit No. 51 marked for 2 Identification.)</p> <p>3 Q. Have you ever seen this e-mail? 4 A. I see it now.</p> <p>5 Q. Do you recall seeing it at the time? 6 A. I do not recall.</p> <p>7 Q. Do you recall having any conversations with 8 anybody about this particular e-mail? 9 A. I do not remember.</p> <p>10 Q. Were you at all involved in determining 11 back charges against Landworks? 12 A. Repeat the question. 13 Q. Were you involved in establishing the back 14 charges against Landworks? 15 A. I don't recall. 16 Q. Do you recall being involved in any 17 meetings where back charges against Landworks were 18 discussed? 19 A. No. 20 Q. In January of 2006, did you make any effort 21 to determine the scope of Landworks' contract? 22 A. I don't recall. 23 Q. Do you recall if you made any effort to 24 determine if, in fact, there was a prior landscaper</p>	<p>1 have any correspondence in your files pertaining to 2 deficient work performed by Landworks?" 3 Do you see that paragraph? 4 A. Yes, I do. 5 Q. Prior to February 1st, 2006, were you 6 instructed to begin preparing a report to the 7 surety? 8 A. I do not recall. 9 Q. It says, "We are preparing a report." Who 10 does that "we" refer to? 11 A. I don't recall. 12 Q. Do you recall sending this request for 13 information to Katie Crockett? 14 A. I do not. 15 Q. Do you recall getting a response from her? 16 A. I do not recall. 17 Q. Were you involved in preparing a report to 18 the surety regarding Landworks? 19 A. Repeat that question. 20 (Pending question read back.) 21 A. I don't remember. 22 Q. When it says "we are preparing a record," 23 do you know if that report was finalized? 24 A. I do not remember.</p>
<p>1 when Jackson was on the project? 2 A. Repeat that question. 3 Q. In January of 2006, did you make any effort 4 to determine if there had been a landscaper working 5 on this project when Jackson was on the project? 6 A. I don't recall. 7 Q. In January of 2006, did you make any 8 inquiry into who was responsible for providing 9 material for site work on the project? 10 A. I don't recall. 11 Q. In January of 2006, did you make any 12 inquiry as to who was responsible for doing exterior 13 electric work at the project? 14 A. Repeat that question. 15 (Pending question read back.) 16 A. I do not recall. 17 MR. MELTZER: Let's mark this as 18 Exhibit 52. 19 (Exhibit No. 52 marked for 20 Identification.) 21 Q. Have you seen this e-mail before? 22 A. I see it now. 23 Q. Do you see it says, "We are preparing a 24 report to the surety regarding Landworks. Do you</p>	<p>1 Q. Do you recall seeing a draft version? 2 A. I do not remember. 3 Q. Would it be typical on a project of this 4 kind to prepare a written report to the surety 5 regarding a subcontractor? 6 A. Repeat that question. 7 (Pending question read back.) 8 A. Perhaps. 9 Q. Okay. Did you do that for other 10 subcontractors on this project? 11 A. I don't remember. 12 Q. Do you know why this was being done 13 particularly in February of 2006? 14 A. No. 15 Q. After February 1st, 2006, have you ever 16 seen any documentation which identifies specifically 17 deficiencies in Landworks' work? 18 A. I don't remember. 19 Q. As I sit here today, can you tell me one 20 item, even one item, that Landworks had done that 21 was deficient? 22 A. I don't remember. 23 MR. MELTZER: Let's mark this as 24 Exhibit 53.</p>

EXHIBIT D

1 (Pages 1 to 4)

Page 1	Page 3																																							
<p>Volume 1 Pages 1 - 122</p> <p>UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS CENTRAL DIVISION C.A. No. 05-CV-40072 FDS</p> <p>LANDWORKS CREATIONS, LLC. Plaintiff, vs. UNITED STATES FIDELITY AND GUARANTY COMPANY and LOVETT-SILVERMAN CONSTRUCTION CONSULTANTS, INC., Defendants.</p> <p>*****</p> <p>DEPOSITION of ROBERT S. BULLOCK, called as a witness by counsel for the Plaintiff, pursuant to the applicable provisions of the Federal Rules of Civil Procedure, before Norma Flynn Borelli, CSR No. 102793, Registered Professional Reporter and Notary Public in and for the Commonwealth of Massachusetts, taken at the offices of THE MOUNTAIN STATES LAW GROUP, 160 Speen Street, Framingham, Massachusetts, on Thursday, January 11, 2007, at 1:30 PM.</p> <p>*****</p> <p>FLYNN REPORTING ASSOCIATES Professional Court Reporters One Exchange Place Worcester, Massachusetts 01608 (508) 755-1303 * (617) 536-2727 TOLL FREE: (888) 244-8858 FAX: (508) 752-4911</p> <p>*****</p>	<p>1 INDEX 2 Testimony of: Direct Cross Redirect Recross 3 4 by Mr. Meltzer 4 5</p> <p style="text-align: center;">EXHIBITS</p> <table> <thead> <tr> <th style="text-align: left;">Exhibit No.</th> <th style="text-align: left;">Description</th> <th style="text-align: right;">For I.D.</th> </tr> </thead> <tbody> <tr><td>54</td><td>E-mail dated 8/17/05</td><td style="text-align: right;">28</td></tr> <tr><td>55</td><td>E-mail dated 8/18/05</td><td style="text-align: right;">34</td></tr> <tr><td>56</td><td>E-mail dated 8/19/05</td><td style="text-align: right;">42</td></tr> <tr><td>57</td><td>E-mail dated 8/19/05</td><td style="text-align: right;">46</td></tr> <tr><td>58</td><td>E-mail dated 8/19/05</td><td style="text-align: right;">55</td></tr> <tr><td>59</td><td>E-mail dated 8/23/05</td><td style="text-align: right;">68</td></tr> <tr><td>60</td><td>E-mail dated 9/15/05</td><td style="text-align: right;">78</td></tr> <tr><td>81</td><td>E-mail dated 7/18/05</td><td style="text-align: right;">83</td></tr> <tr><td>62</td><td>E-mail dated 9/5/05</td><td style="text-align: right;">87</td></tr> <tr><td>63</td><td>E-mail dated 2/1/06</td><td style="text-align: right;">112</td></tr> <tr><td>64</td><td>E-mail dated 8/5/05</td><td style="text-align: right;">116</td></tr> <tr><td>65</td><td>E-mail dated 2/2/06</td><td style="text-align: right;">118</td></tr> </tbody> </table> <p>23 ** EXHIBITS RETAINED BY ATTORNEY MELTZER **</p>	Exhibit No.	Description	For I.D.	54	E-mail dated 8/17/05	28	55	E-mail dated 8/18/05	34	56	E-mail dated 8/19/05	42	57	E-mail dated 8/19/05	46	58	E-mail dated 8/19/05	55	59	E-mail dated 8/23/05	68	60	E-mail dated 9/15/05	78	81	E-mail dated 7/18/05	83	62	E-mail dated 9/5/05	87	63	E-mail dated 2/1/06	112	64	E-mail dated 8/5/05	116	65	E-mail dated 2/2/06	118
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<p>1 APPEARANCES:</p> <p>2 THE MOUNTAIN STATES LAW GROUP 3 Robert N. Meltzer, Esq. 4 160 Speen Street, SU 307 5 P.O. Box 1459 6 Framingham, Massachusetts 01701 7 for the Plaintiff.</p> <p>8 HERMES, NETBURN, O'CONNOR & SPEARING 9 BY: Eric C. Hipp, Esq. 10 265 Franklin Street 11 Boston, Massachusetts 02109 12 for the Defendant/United States Fidelity 13 and Guaranty Company.</p> <p>14 DONOVAN & HATEM LLP 15 BY: Marianne E. Brown, Esq. 16 Two Seaport Lane 17 Boston, Massachusetts 02210 18 for the Defendant/Lovett-Silverman 19 Construction Consultants, Inc.</p> <p>20 ALSO PRESENT: 21 Neal Matthews</p>	<p>1 STIPULATIONS 2 It is stipulated by and between 3 counsel for the respective parties that the 4 deposition transcript will be read and signed by the 5 deponent within forty-five (45) days of receipt of 6 transcript under the pains and penalties of perjury. 7 The filing and the notarization are hereby waived. 8 It is further agreed that all 9 objections, except as to the form of the question, 10 and motions to strike are reserved until the time of 11 trial.</p> <p>12 ROBERT J. BULLOCK, having been 13 satisfactorily identified and duly sworn 14 by the Notary Public, was examined and 15 testified as follows:</p> <p style="text-align: center;">DIRECT EXAMINATION</p> <p>16 BY MR. MELTZER:</p> <p>17 Q. State your name for the record? 18 A. Robert Bullock. 19 Q. Mr. Bullock, have you ever been deposed 20 before? 21 A. No. 22 Q. I will give you some ground rules. My name 23 is Rob Meltzer. I represent Landworks in this case,</p>																																							

24 (Pages 93 to 96)

Page 93	Page 95
<p>1 Concrete?</p> <p>2 A. In this e-mail?</p> <p>3 Q. How about other than this e-mail?</p> <p>4 A. No.</p> <p>5 Q. Ever see any references to them in any documents prepared by Jackson?</p> <p>6 A. No.</p> <p>7 Q. Do you see where it says, "They were probably a sub to Landworks"?</p> <p>8 A. Yes.</p> <p>9 Q. Were you ever able to establish if Frias Concrete was a sub to Landworks?</p> <p>10 A. It wasn't. I wasn't asked to establish that.</p> <p>11 Q. Have you ever seen any documents suggesting they were a sub to Landworks?</p> <p>12 A. No.</p> <p>13 Q. Do you know if by Monday, January 16th, 2006, it had been positively ascertained what exactly Landworks' scope of work had been?</p> <p>14 A. We had the scope of work that we received, the exhibit that's in the subcontract. That's their scope of work.</p> <p>15 Q. As of this January 16th, e-mail, No. 51</p>	<p>1 and Jason to "please include any photos and videotape of these specific items before and after."</p> <p>2 Do you see the reference?</p> <p>3 A. Yes.</p> <p>4 Q. Did you receive any photos and videos in response to this e-mail?</p> <p>5 A. I don't know.</p> <p>6 Q. You state further down, "Also I am sending my current list of the site work scope." Do you see that reference?</p> <p>7 A. Yes.</p> <p>8 Q. Underneath, you have got this whole section in all caps, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Where did you get that material that's attached there?</p> <p>11 A. From the scope of work.</p> <p>12 Q. This is the exhibit to the Jackson contract?</p> <p>13 A. Yes.</p> <p>14 Q. Is there more to that exhibit than this?</p> <p>15 A. I don't know.</p> <p>16 Q. As of December 21, 2005, did you have any conversation with Landworks since the August 2005</p>
<p>1 we've marked, it's not known if Frias was a sub to Landworks, is that correct?</p> <p>2 A. Yes.</p> <p>3 Q. There are still doubts as to who was working for Landworks?</p> <p>4 A. With regard to subs to Landworks, yes.</p> <p>5 Q. You don't know if Frias was to Jackson as opposed to being to Landworks?</p> <p>6 A. I don't know.</p> <p>7 Q. Were you ever asked to investigate that matter by anyone?</p> <p>8 A. I was not.</p> <p>9 Q. Take a look at No. 52.</p> <p>10 A. Okay.</p> <p>11 Q. I want to start --</p> <p>12 MS. BROWN: I'm not done reading it yet.</p> <p>13 MR. MELTZER: Take your time.</p> <p>14 Q. I want to start on Page 5 of 6, the e-mail that is addressed to Bob and Jason. Could you tell me what instigated the creation of this e-mail on December 21st, 2005, at 2:14 PM?</p> <p>15 A. I don't recall what instigated it.</p> <p>16 Q. There is a reference here, you asked Bob</p>	<p>1 conversation discussing their scope?</p> <p>2 A. No.</p> <p>3 Q. By December 21, 2005, had you had any conversation with anybody from Jackson Construction confirming the scope of Landworks' work on this project?</p> <p>4 A. No.</p> <p>5 Q. As of December 21, 2005, had you spoken to anybody at CTM about Landworks' scope on this project?</p> <p>6 A. No.</p> <p>7 Q. As of December 21, 2005, had you spoken to anybody at Waterman about the scope?</p> <p>8 A. Landworks' scope?</p> <p>9 Q. Yes.</p> <p>10 A. No.</p> <p>11 Q. This December 21, 2005, 2:45 e-mail, is based entirely on an understanding of scope drawn from the exhibit to the Jackson contract?</p> <p>12 A. Yes.</p> <p>13 Q. Had you looked at any other documents to ascertain scope by December 21, 2005?</p> <p>14 A. Just the subcontract with Jackson.</p> <p>15 Q. By December 21, 2005, had you reviewed any</p>

25 (Pages 97 to 100)

Page 97	Page 99
1 schedules of values? 2 A. No. 3 Q. This all-capped section you have here, is 4 that cut and pasted from something? 5 A. I don't recall. 6 Q. Directing your attention on Page 4 of 6, 7 there is another e-mail, same people. There is a 8 reference there to Bob and Jason included in the 9 December 21st e-mail. Do you see that reference? 10 A. Yes. 11 Q. Had you not received the information by 12 January 9, 2006? 13 A. No. 14 Q. Had you been getting pressure to provide 15 this information? 16 A. No. 17 Q. Why did you send this e-mail on January 9, 18 2006? 19 A. There was a due date. 20 Q. What was the due date? 21 A. I don't recall. 22 Q. Due date for what? 23 A. The Information. 24 Q. What was going to happen when this due date	1 Q. What was the basis for your understanding 2 of this 33,474 was within Landworks' scope? 3 A. They were responsible for lawns and 4 grasses. 5 Q. So this comes from -- 6 A. They were responsible for this work in the 7 subcontract. 8 Q. This is from the exhibit from the Jackson 9 contract? 10 A. The subcontract, yes. 11 Q. Next section, "landscaper, labor, 12 equipment, perimeter building, lawns, things of that 13 nature"? 14 A. Yes. 15 Q. What is your basis for asserting these are 16 the responsibility of Landworks? 17 A. The subcontract between Jackson and 18 Landworks. 19 Q. Relying entirely on the exhibit to the 20 Jackson contract? 21 A. Relying on the subcontract. 22 Q. The document exhibit you refer to in your 23 December 21, 2005 e-mail? 24 A. Referring to their scope of work.
Page 98	Page 100
1 arrived? 2 A. I was getting my job done. 3 Q. Was somebody pressuring you to get this 4 information? 5 A. I don't recall pressure. 6 Q. Take a look on Page 3 of 6, an e-mail dated 7 Tuesday, January 10, 2006 at 3:20 PM from Jason 8 Goodwin to you. 9 A. Yes. 10 Q. Going down this category, it provided a 11 list of material where it says "loam, fill and 12 sand"? 13 A. Yes. 14 Q. Do you know what that reference to 15 "material," what that refers to? 16 A. That refers to actual cost for loam, fill, 17 and sand. 18 Q. That includes the lawns around the building 19 and so forth? 20 A. Yes. 21 Q. Was it your understanding as of January 10, 22 2006, that this entire category coming out to 33,474 23 was within Landworks' scope? 24 A. That was my understanding.	1 Q. Which is shown on Page 5 of 6? 2 A. Not just that. 3 Q. What else? 4 A. The subcontract. The entire contract. 5 Q. Based upon the Jackson subcontract? 6 A. Yes. 7 Q. When it goes down and says, "Turf Links, 8 53,094 total to date"? 9 A. Yes. 10 Q. What is that for? 11 A. Seeding and fertilizer. 12 Q. Of what? 13 A. The lawn areas. 14 Q. That's not the athletic fields, you said, 15 right? 16 A. I don't recall. It may be athletic fields, 17 too. I don't recall. 18 Q. We have the next one "Cape and Island, 185 19 for a purchase order." 20 A. Yes. 21 Q. What is that for? 22 A. That is for the track. I believe it is the 23 whole track. 24 Q. Is it your testimony that "185" is scope

26 (Pages 101 to 104)

Page 101	Page 103
1 within Landworks' subcontract with Jackson?	1 Q. Who did the site demolition there?
2 A. If this includes the rubber track, the	2 A. Site demolition is part of Landworks'
3 rubber track is not part of Landworks' contract.	3 contract.
4 Q. Do you know how much of that 185?	4 Q. Do you know for a fact that Landworks did
5 A. I don't know.	5 site demolition?
6 Q. There is a section for G&R. Comes out to	6 A. I know it's part of their contract,
7 only about 1,300, but concrete form for head walls?	7 subcontract.
8 A. Yes.	8 Q. When does site demolition usually occur on
9 Q. Would you state that is Landworks' scope of	9 a construction project like this?
10 work?	10 A. It can occur any time. This is not
11 A. Yes.	11 building a new building. This is a remote area of
12 Q. Based upon what?	12 the job. It could occur any time.
13 A. I don't recall.	13 Q. It could have occurred at the beginning of
14 Q. Then we have electrical work at the	14 the job?
15 football field, 12,450. Would you tell me why that	15 A. It could have.
16 would be within Landworks' scope?	16 Q. Site contractor in the beginning of this
17 A. It was removed under site demolition.	17 could have done that damage?
18 Q. Under site demolition, that belonged to	18 A. Could have.
19 Landworks?	19 Q. Do you know if Landworks was the site
20 A. If it was damaged by them.	20 contractor at the beginning of the job?
21 Q. Was it damaged by them?	21 A. I don't know.
22 A. During this site demolition. My	22 Q. Bottom of Page 2 of 6. There is an e-mail
23 investigation showed it was.	23 from you addressed to the esteemed attorney Eric C.
24 Q. What investigation was that?	24 Hipp, sitting to my right, saying, "Here is the
Page 102	Page 104
1 A. Discussions.	1 input from G&R regarding the site work scope." Do
2 Q. With whom?	2 you see this?
3 A. Bob Cox when I walked around with him in	3 A. Yes.
4 July.	4 Q. Did you have any conversations with
5 Q. What did he tell you?	5 Attorney Hipp about this January 10th, 2006 e-mail?
6 A. I don't recall exactly, but that's why I	6 MR. HIPP: Objection.
7 listed it as Landworks.	7 A. Oral.
8 Q. You don't recall exactly what he told you?	8 Q. Do you recall at any time having any
9 A. No.	9 conversation with Attorney Hipp in which you explain
10 Q. Your understanding was based upon some July	10 that you are basing your understanding of the scope
11 conversation with Bob Cox, Landworks damaged	11 on Jackson's subcontract with Landworks?
12 electrical?	12 MR. HIPP: Objection.
13 A. Yes.	13 A. I don't recall.
14 Q. Did Bob Cox point out something and say,	14 Q. You don't recall writing any e-mails that
15 Landworks damaged this?	15 stated that?
16 A. Yes.	16 A. I don't recall.
17 Q. Specifically he mentioned Landworks?	17 Q. Turn to the top of Page 2 of 6. Do you see
18 A. I don't recall.	18 where it requests documentary support for these
19 Q. Did he say site guy or Landworks?	19 charges? "Thank you for the e-mail regarding the
20 A. I don't recall.	20 back charges." Do you see where it says, "Where is
21 Q. What exactly were you looking at that he	21 the documentary support for these charges?"
22 claimed was broken?	22 A. Yes.
23 A. At that point we were looking around the	23 Q. Did you provide that documentary support?
24 track area where the site demolition took place.	24 A. Yes.

27 (Pages 105 to 108)

Page 105	Page 107
1 Q. What did that consist of?	1 A. Yes.
2 A. It consisted of tickets for material and	2 Q. Why was this e-mail generated, do you know?
3 G&R Invoices and their subcontractor invoices.	3 MR. HIPP: Objection. Which
4 Q. Did you provide any documents to Attorney	4 e-mail are you referring to?
5 Hipp that referenced the scope of Landworks?	5 MR. MELTZER: Look at the string.
6 MR. HIPP: Objection.	6 The reason I put that in is I want to get the string
7 A. No.	7 of the whole exhibit.
8 Q. I am going to direct your attention then to	8 MS. BROWN: We've looked at this
9 Page 1, an e-mail from you to Bob Morel and Jason	9 before.
10 Goodwin, asking that certain information be provided	10 Q. I am looking at the first e-mail.
11 no later than Monday, June 30, 2006. Do you see	11 A. Okay. The e-mail from Jason to me.
12 that?	12 Q. Do you know why it was generated?
13 A. Yes.	13 A. No.
14 Q. There is an e-mail above that from Jason	14 Q. Directing your attention to these costs to
15 Goodwin to you. Do you see that reference?	15 complete.
16 A. Yes.	16 A. Yes.
17 Q. Was documentation provided that supported	17 Q. The reference "six plus concrete ramps, not
18 the paragraph at the top of that e-mail?	18 ADA," do you know what that means?
19 A. Pardon me?	19 A. Yes.
20 Q. Was the documentation that was provided,	20 Q. What does that mean?
21 did it reference the top of that? "All the	21 A. The ramps were not placed per ADA
22 documentation is represented by the invoices I have	22 requirements.
23 supplied." Do you see that reference?	23 Q. Do you know who poured those ramps?
24 A. Yes.	24 A. No.
Page 106	Page 108
1 Q. It says here they supplied documents each	1 Q. We had a reference at some point to a
2 month to LSCC.	2 company called Frias who was involved in this
3 A. Yes.	3 project. Do you remember we were discussing that a
4 Q. In addition to that, did G&R Construction	4 few moments ago?
5 actually go themselves and pull together a new batch	5 A. I remember.
6 of documents for submission?	6 Q. Do you know if they poured those ramps?
7 A. I don't recall.	7 A. I don't know.
8 Q. You don't recall if they asked LSCC to	8 Q. Same thing for the concrete stoop. Do you
9 gather that information together?	9 know who poured it?
10 A. I don't recall that. I don't remember.	10 A. No.
11 Q. Do you recall seeing the Griffin Electric	11 Q. "Touch up seeding fertilizing," do you know
12 Invoice?	12 where that is located?
13 A. No, I don't.	13 A. I don't recall.
14 Q. Have you ever seen a Griffin Electric	14 Q. You get to "the installation of athletic
15 invoice that indicates they are fixing things broken	15 equipment," do you know what athletic equipment is
16 by Landworks?	16 involved there?
17 A. I don't remember.	17 A. I don't know the specific pieces, no.
18 Q. As you sit here today, you are not sure	18 Q. Why is that being attributed to Landworks
19 what the Griffin invoice showed?	19 In this e-mail, do you know?
20 A. No. I just don't remember the Griffin	20 MR. HIPP: Objection.
21 Invoice that I am referring to here, or he is	21 Q. If you know.
22 referring to here.	22 A. I don't know.
23 (Short recess taken.)	23 Q. A reference to "asphalt at flagpoles," do
24 Q. Do you recall seeing this e-mail?	24 you know what that means?

28 (Pages 109 to 112)

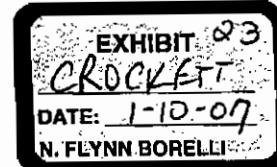
Page 109	Page 111
1 A. Yes.	1 what does that refer to?
2 Q. What is that?	2 A. That's the fence.
3 A. There was asphalt missing around the	3 Q. Steelco's company?
4 flagpole.	4 A. Yes.
5 Q. What kind of asphalt was it, do you know?	5 Q. That's not Landworks?
6 A. Wearing.	6 A. Correct.
7 Q. Are we talking bituminous or concrete?	7 Q. "Grading and drainage at paved area
8 A. Bituminous.	8 adjacent to track." What paved area is that?
9 Q. Do you know whose scope of work that was?	9 A. I don't know.
10 A. Subcontract for Landworks.	10 Q. See where the parentheses says, "Unforeseen
11 Q. You are referring back to the exhibit of	11 conditions. Leave if unclear"?
12 the Jackson and Landworks' subcontract?	12 A. Yes.
13 A. Yes.	13 Q. Any idea what it means?
14 Q. Does this specify asphalt flagpole in that	14 A. No.
15 subcontract? Did it stay as part of the scope?	15 Q. Do you have any reason to believe that
16 A. It shows it on the drawings, yes.	16 \$75,000 is attributable to Landworks?
17 Q. When you say "it's close to 10,000," was	17 A. I just don't recall that issue.
18 that work previously done?	18 Q. On this final as-built, 15,000, do you know
19 A. I don't see this.	19 what that is?
20 Q. Was the asphalt missing or defective?	20 A. There is a requirement to do an as-built
21 A. Missing.	21 survey.
22 Q. It hadn't been done?	22 Q. Of what?
23 A. Yes.	23 A. The grading.
24 Q. How about the sidewalk next to Sherwood	24 Q. As we've already discussed, you don't know
Page 110	Page 112
1 School, what's the issue with that?	1 if it had been done prior to February of 2006?
2 A. Missing.	2 A. As I stated before, I had no survey in our
3 Q. Not done at all?	3 possession.
4 A. Not done at all.	4 Q. And you hadn't asked Landworks for one in
5 Q. Not talking defective --	5 your prior conversation?
6 A. Yes.	6 A. Correct.
7 Q. "Concrete pad at oil tongue, 10,000." Do	7 MR. MELTZER: Let's mark this as
8 you know what that refers to?	8 Exhibit 63.
9 A. That refers to cracks in the concrete pads	9 (Exhibit No. 63 marked for
10 over the oil tank.	10 identification.)
11 Q. Do you know who poured that concrete?	11 Q. I am going to ask you to look at No. 53.
12 A. No.	12 Do you recall seeing that document?
13 Q. Do you have any reason to believe it was	13 A. Yes. I'd like to read it.
14 Landworks?	14 Q. By all means.
15 A. No.	15 A. Okay.
16 Q. What does "loam repair after track and	16 Q. Do you see there is a reference in the
17 paving installed," what does that mean?	17 e-mail that, "Bill sent to Katie Crockett, the
18 A. After the track will be installed, the	18 architect, requesting correspondence in your files
19 equipment putting the track down will inevitably	19 pertaining to deficient work performed by
20 damage those areas.	20 Landworks," do you see that reference?
21 Q. This was for repair of areas damaged during	21 A. Where is it?
22 the track installation?	22 Q. It says, Thank you for -
23 A. Yes.	23 A. I know it's in here.
24 Q. "Fence around track and at school, 50,000,"	24 Q. Here.

29 (Pages 113 to 116)

Page 113	Page 115
1 A. Okay.	1 Q. Ever ask anybody in the industry?
2 Q. Do you recall seeing this e-mail in	2 A. I did not.
3 February of 2006?	3 Q. As you sit here today, do you have any idea
4 A. I remember the e-mail.	4 what the bulk of their work is?
5 Q. Do you recall, after this e-mail was sent,	5 A. No.
6 the architect, Katie Crockett, provided to	6 Q. Where they work?
7 Lovett-Silverman a list of deficient work performed	7 A. No.
8 by Landworks?	8 Q. Who they work for?
9 A. I don't recall that. I don't recall.	9 A. No.
10 Q. Do you recall receiving any list from CTM	10 Q. What their usual scope of business is?
11 identifying deficient work performed by Landworks?	11 A. No.
12 A. I don't recall.	12 Q. Their reputation in the community?
13 Q. Do you recall seeing any kind of	13 A. No.
14 documentation from Waterman identifying deficient	14 Q. In your various travels in the construction
15 work performed by Landworks?	15 business, has anybody ever mentioned Landworks to
16 A. I don't recall.	16 you?
17 Q. With the exception of the comment made by	17 A. No.
18 Cox, which we talked about, in July, had anybody	18 Q. Has anybody, outside of this project in
19 ever said to you from July 2005 and today, that	19 your travels in the construction industry, ever made
20 Landworks performed deficiently on this project?	20 derogatory comments to you about Landworks?
21 A. I don't recall.	21 A. I don't recall any.
22 Q. Have you ever seen any correspondence from	22 Q. In your travels in the industry since 2005,
23 anybody identifying work that was not performed	23 have you ever mentioned Landworks to anybody on any
24 correctly by Landworks specifically?	24 other project in any context?
Page 114	Page 116
1 A. I don't recall that list.	1 A. I don't recall.
2 Q. In that same e-mail that Bill Meritz sent	2 Q. I'm going to ask you about an older e-mail.
3 to Katie Crockett, they wrote, "We are preparing a	3 We have an e-mail here from Bill Meritz to you. I'm
4 report to the surety regarding Landworks." Have you	4 not sure exactly what was attached, but there is a
5 ever seen a report to the surety regarding Landworks	5 message from you to Bill Meritz, 1:05 PM, August 5.
6 after February 1st, 2006?	6 It says, "Now we know who had the contract for
7 A. No.	7 asphalt and lawns." On August 5th, 2005, who had
8 Q. As you sit here today in January of 2007,	8 the contract for asphalt and who had the contract
9 can you identify any work done by Landworks itself	9 for lawns?
10 that was deficient on this project as opposed to	10 A. Landworks.
11 perhaps not performed?	11 Q. That's based upon Exhibit A?
12 A. I don't recall.	12 A. Based upon their subcontract.
13 Q. Prior to this project, had you ever heard	13 MR. MELTZER: Let's mark that as
14 of Landworks?	14 Exhibit 64.
15 A. No.	15 (Exhibit No. 64 marked for
16 Q. When you were talking to Neal Matthews in	16 Identification.)
17 August of 2005, the conversation we talked about,	17 Q. Seeing that reference to Frias Concrete
18 did you ever discuss with him what Landworks does?	18 that we've talked about, does that change, in your
19 A. I did not.	19 mind, who had the concrete work on this job?
20 Q. Did you ever investigate what they do?	20 A. I don't think it changes in my mind, no.
21 A. No, I didn't.	21 It doesn't change that in my mind.
22 Q. Did you ever search the web trying to find	22 Q. If we found out who Frias was and they did
23 information on them?	23 the concrete work on this project, you would still
24 A. No.	24 take the position it was Landworks' scope?

EXHIBIT E

Shrewsbury Middle School – West
Shrewsbury, Massachusetts



CONSTRUCTION MEETING #107

23 December 2004

ATTENDANCE: Dan Morgado, Town Manager
Ron Alarie, Building Inspector
Gerry LaFlamme, Fire Chief
Bob Cox, Superintendent of Public Buildings
Patrick Collins, School Dept. Business Manager
Frank Leonardo, Jackson Construction Co.
Jack Ferguson, CTM
Duffy Lanchiani, Clerk of the Works
Michael Pagano, Lamoureux Pagano Associates
Katie Crockett, Lamoureux Pagano Associates

ITEM:	DISCUSSION:	RESPONSIBILITY:
6.4.2	<p>Project Schedule – see previous minutes for more info.</p> <p>Balance of lockers to be delivered on Saturday, September 18. (885 on site currently). JCC to install balance of lockers (10/7). 83 additional lockers delivered (not yet installed). Balance due 11/12 (11/11). More (undefined quantity) delivered 11/18 (11/18).</p> <p>JCC reported that if the requisition payments continue at the current pace, construction will last another 11 months (11/18).</p> <p>JCC reported that their goal is to have C&D ready (except locker rooms, public buildings department area) for occupancy Jan. 3, 2005. The sequence of events required for that process was reviewed including: testing of life safety systems, isolation of contractor work (after hours only) from student occupancy, safe egress routes, below ceiling punch list, etc.(12/16)</p> <p><i>JCC distributed an Activity Schedule for some items remaining to complete the project (attached)(12/23).</i></p> <p><i>The School Department would like to occupy the Gym and 1 Bldg. C classroom on Jan. 3 and the balance of C&D on Jan. 12. The town's Builders' Risk insurance renewal is due mid-Jan. with notification by Jan. 5. All efforts should be made to have C&D substantially complete by Jan. 5. Emergency systems to be tested Monday, Dec. 27 @ 8:00am. JCC to confirm that all systems are prepared by Sunday morning, Dec. 26. (12/23).</i></p>	CTM/JCC
8.26.1	<p>Partial Occupancy Schedule: A&B (See previous minutes for more info.)</p> <ul style="list-style-type: none"> • Some fire doors are not closing properly (i.e. gaps between pairs of doors, etc.) Some fire doors in A &B were cut to close properly. JCC must replace (11/4). <i>JCC intends to certify relabeled doors. The Owner will not accept relabeling in lieu of replacement (12/23).</i> • Installation of metal doors and hardware unacceptable in many cases – i.e. spliced rods, doors that are larger than openings – must be replaced (9/30). • 3 fire extinguishers must be installed (11/4). Duffy to confirm locations (11/18). • All exterior emergency lighting must be operational (11/4). JCC to confirm schedule (11/18). 	



Shrewsbury Middle School – West
Shrewsbury, Massachusetts

CONSTRUCTION MEETING #107

23 December 2004

9.9.1 Other A & B Issues

JCC

- Security testing scheduled for 11/7 (10/14). 95% complete (11/18).
- Building electric ground has not yet been installed (10/14). Ongoing (11/4).
- MEP above ceiling punch list has not yet been completed. MEP below ceiling punch list to be conducted this week (11/18).
- Cable in tunnel must be properly supported. Ongoing (11/18).
- Preparation for appliances (electrical and cutouts) incomplete in Room 141 (10/7). School Dept. to forward cut sheets to JCC for coordination. 220 required for dryer and oven (10/21).
- Door 253 required (reverse swing) for separation between SPED classroom and Library Media (10/21).
- Video distribution has not been installed (10/21). Or ordered (12/2).
- Balancing ongoing. Room 159 problematic (11/18).
- Incomplete window installation (plywood openings, broken hardware, etc.) continue to create heating issues (12/9).
- *JCC to confirm status of balancing report. JCC reports that all areas have air supply; controls to be confirmed (12/23)*
- *LPA below ceiling punch list to begin 12/27(12/23)*.

9.9.2 Fire Damage Area

JCC

- Roof edge and associated roof work (11/4). 2 millwork cabinets remain to be installed, sink installation underway (11/18).
- *Metal panel installation/caulking unacceptable at courtyard area: excessive joint size and spliced materials (12/23)*.

9.9.3 C & D Buildings

JCC

- (Note 9/16): Lift schedule to be verified by JCC. Due 10/25 (10/21). Mason required for installation. JCC negotiating mason's return (11/18). *Existing steel beam problematic for installation. JCC awaiting structural direction (12/16)*.
- Some panels remain to be installed, horizontal batten strip remains to be installed on all elevations (10/14). Back on site; 1 week to complete. Currently 80% caulked (11/18). JCC to confirm that vertical batten strips can drain any condensation build up due to lack of horizontal batten strips (12/9).
- (Note 11/4): Corian edges at counters in gym lobby must be eased.
- (Note 11/11): Stage floor refinishing schedule undefined.
- (Note 11/18): Gym speakers schedule to remain are not on site and require replacement.
- (Note 12/9): Fire alarm installed except three devices, to be programmed Saturday, Dec. 11. *Retesting scheduled for 12/27 (12/23)*.
- (Note 12/9): Lack of glazing at gym vestibule doors is problematic for school programming. JCC reports glazing due early next week.
- (Note 12/9): 3 hollow metal frames not installed.

9.2.1 Site Issues (see previous minutes for more info.)

JCC

- MAG Irrigation to install rain sensor, prepare as-builts, train the owner,



Shrewsbury Middle School – West
Shrewsbury, Massachusetts

CONSTRUCTION MEETING #107

23 December 2004

(10/21). Owner to accept credit for winterization of irrigation system (12/9).		
9.9.7	Roof (See previous minutes for more info.) (Note 12/2): JCC claims that some roof edge damage (at the gym building) was unavoidable due to metal panel installation requirements. CTM claims that much of the damage was done during roof equipment demolition prior to metal panel installation.	JCC
9.16.2	Overhead Door Issues Structural steel at the overhead doors is incomplete. Infill above lintel is required at overhead doors (10/14). Angle remediation with backer rod and caulk acceptable (11/4).	JCC
9.30.1	As-Builts JCC to provide Coghlin list of ESCOA incorrect items (10/21). JCC reported that they do not have site as-builts (11/4). Yankee as-builts and O&M manuals expected within a week. Royal Steam in progress (11/18).	JCC
9.30.2	Kitchen Issues (See previous minutes for more info.) Other Issues: <ul style="list-style-type: none">• Coiling doors are due in late Nov. (11/4).• Stove and kettle won't light. JCC to review Kitchen deficiency items (11/18).	JCC
10.4.1	Electrical Issues Meeting (See previous minutes for more info.) Assembly Sound Systems <ul style="list-style-type: none">• On order – long lead time. RFIs: Coghlin reports that RFIs issued in September have not yet been answered. LPA has no records of these RFIs. JCC to review status. (12/16)	
12.2.1	Punch List: JCC hand delivered list of items complete on punch list. JCC to notify LPA when ready for re-inspection.	JCC
12.23.1	<i>Sprinkler System Issues</i> <ul style="list-style-type: none">• December 20 water ran through the dry system. Fire Chief reminded JCC that the dry system must be properly cleaned to ensure that no water is left in the system. This must be done prior to the next fire alarm system test. Also, all sprinkler signage must be installed including valves. (12/23)• On December 21, a sprinkler line froze and burst in Vest. 320. JCC to investigate and seal any areas where air infiltration could be a problem (12/23).• On December 23, the Fire Chief found that the sprinkler system was not in operation and the fire alarm system was not working properly while the school was occupied. A fire watch was established until the close of school day when the system would be reset (12/23).	JCC

Shrewsbury Middle School – West
Shrewsbury, Massachusetts

CONSTRUCTION MEETING #107

23 December 2004

Next Meeting: Thursday, Dec. 30, 2004, 10:30am.

Meeting Minutes by: Katie Crockett

Cc: Fernand Tornaz Rob Johnson Michael Pagano Todd Manning

9710-MS/Minutes/Contractor/Construction Meeting #107.doc



Oak Middle School Activity Schedule

Sitework	Activity	Schedule	Notes	Responsible
Handicap Ramps			Disputed	Landworks/Frias
Site signs		30-Jan		JCC
6 sona tubes		30-Jan		Coughlin
Change order to Install lights		Spring '05		Landworks
Paving		Spring '05		Landworks
at Flagpole island		Spring '05		Landworks
at front of shed		Spring '05		Landworks
running track		Spring '05		Landworks
long jump pit		Spring '05		Landworks
High Jump Base		Spring '05		Landworks
75 feet of walkway to Sherwood school field		Spring '05		Landworks
Rubberize track and High Jump Pit		Spring '05		Tracklite
Fencing around Track and entrance to Sherwood Field		Spring '05		Steelco
Install 2 foul line poles		Spring '05		Tracklite
Straighten center rail at CLF gate eats end of property		Spring '05		Steelco
Install bases at benches		Spring '05		Need to Buy/Tracklite
Replace base collar at flagpole		Spring '05		Landworks
Excavate electric line for ticket booth		Spring '05		Add for Landworks not for JCC
2 Rails for stairs		12/27-12/31		Ralph's
Pour shot put pad		Spring '05		JCC
2 Long jump pits replaced		Spring '05		Tracklite
Reinstall granite monuments		Spring '05		Landworks
Paint lines on running tracks		Spring '05		Tracklite
Paint lines parking lot SE side at front		Spring '05		Landworks
Reinstall Bergstrom filed sign		Spring '05		Landworks
Install HC signs and posts (6) each		Spring '05		Baro/Need to Buy?
Complete seeding		Spring '05		Landworks
JCC	Complete Headwalls	Spring '05		JCC

Oak Middle School
Activity Schedule

12/20/2004

Building Exterior	"B" Wing	"C" Wing	"D" Wing	12/27 - 12/31	AFCO
Repair damaged roof edge				Weather	Stanley
Complete Canopy sheathing				12/27-12/31	Bristol
Complete Canopy metal roofing				1/8 - 1/15	Stanley
Complete Canopy soffit				Weather	Century
Paint exterior trim at auditorium				Weather	Century
Complete metal panel trim at building				1/19/2005	Sunrise
Complete caulking at metal panel trim					
"C" Wing					
Complete Garage door controls				12/27 - 12/31	AFCO
Install 2X2 lights at room 402				12/27 - 12/31	Coughlin
Install roll up doors in cafeteria				12/27 - 12/31	AFCO
Tile around roll up doors				30-Dec	McLaughlin
Install counter at roll up doors				29-Dec	Kitteridge
Paint Girl's locker room				12/27 - 12/31	Century
*Pending architect's direction on the ceiling					
Install door and frame at Boy's and Girl's locker rm					Bristol
Complete epoxy floor at locker rooms				24-Dec	Cutting edge
Complete wheel chair lift*				31-Dec	AFCO
* Pending architect's resolution of interfering beam					
Complete stair treads				31-Dec	Bristol
Install Grilles at Boy's locker room					Ralph's
Install remaining door and frame at Boy's locker room				24-Dec	Bristol
Install Gym pads				15-Jan	Pappas
Complete Gym Curtains				22-Jan	Pappas
Interior signage C&D Wing				28-Jan	Pappas
Rubber floor in Rm 485					Brodney
Painting & Taping Room #497				12/27-12/31	Century
"D" Wing					

**Oak Middle School
Activity Schedule**

12/20/2004

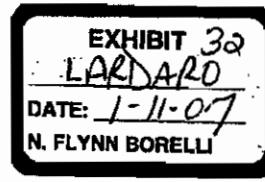
Clean out garage	12/27 - 12/31	JCC
Finish Garage Paint	12/27 - 12/31	Century
Covers for speakers and abandoned electric boxes	12/27 - 12/31	Ralph's
Install doors and frames Rm 502	22-Dec	Bristol
Cement in old access opening Rm 502	23-Dec	JCC
Pour ramp at garage door rm 367		JCC
Install HM frames at old louvers Rm 361	24-Dec	Bristol
Repair ceiling stair #12	24-Dec	JCC
Finish Counters Rm 331	31-Dec	Bristol
Finish counters at auditorium	24-Dec	Bristol
Ground floor A&B		
Complete shelving storage Rm 131	31-Dec	Bristol
Complete glass in display cases lower "B" wing	31-Dec	Architectural Window
Relocate light fixtures in corridor 130	31-Dec	K & K
Install new access panel in stair #2	31-Dec	Ralph's
Install carpet transition strips	31-Dec	Brodney
1st Floor A&B		
Complete curtains in nurse's area		Kreative
Install Marker board in room 305	24-Dec	Boston Blackboard
Install missing cabinet in storage room 333A		Bristol
Install glass shelving in media center display case	31-Dec	Architectural Window
Reverse frame Rm 253	31-Dec	Bristol
Install carpet transition strip in media center	31-Dec	Brodney
Complete taping around doors Rm 252A and 253	24-Dec	JCC
Handles for display cases		
Window sill at room 283	15-Jan	Bristol
General Notes		
Relabel and Reinstall fire doors	12/27/2004	JCC

Oak Middle School Activity Schedule

12/20/2004

Message

Page 1 of 2

**Julie Ciollo**

From: Pedro Rosario [prosario@lovett-silverman.com]
Sent: Monday, August 15, 2005 4:45 PM
To: d_schultz@kmd-bsmc.com
Cc: 'Tony Lardaro'; 'Al Falango'; 'Robert Bullock'; 'Bill Meritz'
Subject: Shrewsbury Middle School/Ratification Analysis
Importance: High
Attachments: KMD Rat.Analysis PMR 80405.xls

Mr. David Schultz; Mr. David Dupre:

Attached is our updated ratification analysis for your review. I have updated the analysis by adding the amounts that the Architect is holding regarding certain credits and punch list items. I will send to you the punch list items in question via fax but the most important items of work under the HVAC contract is air and water balancing and completion & commissioning of the ATC by Johnson Controls. In addition, our analysis lists the outstanding amounts due to Johnson Controls and Cleaver Brooks, and very possibly the Balancer.

As you can see and as I've discussed with you both the change order for the claims have to be placed aside in moving forward and getting KMD back to the project. As I have also stated the claims have to be reviewed by Lovett Silverman with the proper back up and documentation to validate the claims. I disagree with Mr.. Dupre that these change orders are approved; there is no indication on the documents that have been submitted to us that they are. Therefore, we can not agree to KMD's demand that they be paid a substantial amount of contract funds to return to Shrewsbury and complete their HVAC work. As we stated above, the critical portion of the HVAC work is the air and water balancing and the completion and commissioning of temperature controls, which we do not know who the firm is that is to perform the work and, as acknowledged by Mr.. Schultz, how much money is due to them before they return to complete their balancing work.

Therefore, we need to know by tomorrow if KMD Mechanical is going to return to the project to complete their work, have their balancer back on-site or not. There is very little time left to perform certain contract work so that the school can obtain their certificate of occupancy. Call me first thing tomorrow morning regarding this matter.

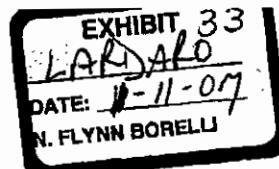
Sincerely,

Pedro M. Rosario

Lovett Silverman Construction Consultants, Inc.

Hauppauge, New York

Telephone: (631) 979-7600; Facsimile: (631) 979-7602



Page 4 of 6

Sent: Tuesday, August 16, 2005 8:24 AM
To: Robert Bullock
Subject: RE: Shrewsbury Middle School - Steelco Chain Link Fence

I will fax it there right now. Are there other fax numbers for your colleagues you copies on the message from last night?

-----Original Message-----

From: Robert Bullock [mailto:rbullock@lovett-silverman.com]
Sent: Tuesday, August 16, 2005 8:13 AM
To: cmpatten@mnplaw.com
Subject: RE: Shrewsbury Middle School - Steelco Chain Link Fence

Carlotta

I am out of my office until Thursday. Would it be possible to email the contract to me or fax it to my attention at the following: (646) 390-6542. Thanks

From: Carlotta M. Patten [mailto:cmpatten@mnplaw.com]
Sent: Tuesday, August 16, 2005 7:40 AM
To: Robert Bullock
Cc: 'Al Falango'; 'Tony Lardaro'
Subject: RE: Shrewsbury Middle School - Steelco Chain Link Fence

I am faxing you the contract right now.

-----Original Message-----

From: Robert Bullock [mailto:rbullock@lovett-silverman.com]
Sent: Monday, August 15, 2005 11:47 PM
To: cmpatten@mnplaw.com
Cc: 'Al Falango'; 'Tony Lardaro'
Subject: RE: Shrewsbury Middle School - Steelco Chain Link Fence

Carlotta,

The attached is what you faxed me in July. I do not see a contract between Jackson and Steelco in this attachment. If you have a signed contract between Jackson and Steelco please send it to me.

What I am looking for is an executed agreement describing the full scope of Steelco's work and the original, mutually agreed to, price. I need this so I know what Jackson and Steelco agreed to in writing before the fencing work was started. From this I would be able to calculate the value of the remaining work. I do not see anything in the attached where Jackson agreed to the price that Steelco shows on their invoices (pages 5, 6, and 7 of 7) and statement (page 4 of 7). Also, I can not determine what Steelco would be doing in the future for the Balance to Finish of \$47,830 shown on Page 7 of 7. I have meetings from 9 AM to 3:30 PM and again 7PM to 9 PM. Hopefully this email better describes what we need. Sorry for any confusion.

Thanks,

Bob Bullock
 Lovett Silverman Construction Consultants Inc.
 Cell: 717-422-7518
 Web Site: Lovett-Silverman.com

The information contained in this e-mail is confidential information intended only for the use of the individual or entity named. If the reader of the message is not the employee or agent responsible to deliver it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this

communication in error, please immediately notify the sender by reply e-mail and then delete the message.

From: Carlotta M. Patten [mailto:cmpatten@mnplaw.com]
Sent: Monday, August 15, 2005 9:23 PM
To: Robert Bullock
Subject: RE: Shrewsbury Middle School - Steeco Chain Link Fence

Bob,

I sent you the contract back in July. It seems that I am a bit confused by your email below.

Please call me tomorrow. I have a meeting from 9 to 11 but am available other than that.

[Carlotta M. Patten] -----Original Message-----

From: Robert Bullock [mailto:rbullock@lovett-silverman.com]
Sent: Monday, August 15, 2005 2:30 PM
To: cmpatten@mnplaw.com
Subject: RE: Shrewsbury Middle School - Steeco Chain Link Fence

Carlotta,

Without a contract in place between Steelco and Jackson or Standen I am not sure the draft ratification is correct. What is the scope of the remaining work? What is Steelco's value for the remaining work?

Bob

From: Carlotta M. Patten [mailto:cmpatten@mnplaw.com]
Sent: Monday, August 15, 2005 2:33 PM

To: Robert Bullock

Subject: Shrewsbury Middle School - Steeco Chain Link Fence

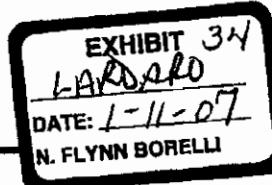
Bob,

I am back in the office. I am writing to inquire as to the status of the ratification and my letter to you dated August 4 with a further breakdown of remobilization costs.

Thank you,
Carlotta Patten

Carlotta McCarthy Patten, Esq.
Metaxas, Norman & Pidgeon, LLP
900 Cummings Center Suite 207T
Beverly, MA 01915
Phone: (978)927-8000
Fax: (978)922-6464
Email: cmpatten@mnplaw.com
www.mnplaw.com

Julie Ciollo



From: Tony Lardaro [tlardaro@lovett-silverman.com]
Sent: Thursday, August 18, 2005 8:54 PM
To: Robert Bullock
Subject: Re: Shrewsbury Middle School - Data required for Financial Analysis

Bob,
What e-mails are you referring to? From your e-mail I gathered that you were going to meet with Landworks to see if they could finish the sitework and they have a lawsuit against the Surety and Jackson. If that's the case, just tell them that we've been told we can't deal with them while the case is pending.

Tony

-----Original Message-----
From: "Robert Bullock" <rbullock@lovett-silverman.com>
Date: Thu, 18 Aug 2005 20:23:35
To:"'Al Falango'" <afalango@lovett-silverman.com> Cc:"'Tony Lardaro'" <tlardaro@lovett-silverman.com>
Subject: FW: Shrewsbury Middle School - Data required for Financial Analysis

Al,

I am going to cancel this meeting based on your email and Jim Peters. Should I mention to him why we are not meeting:

We are presently a defendant in a legal action brought by your company against Jackson Construction and USF&G. The underlying issue is a dispute regarding your sitework subcontract on the Shrewsbury Middle School project. If Landworks is interested in settling that legal action and resuming their work, they should communicate that desire through their counsel to Brad Carver who represents USF&G in that litigation.

From: Neal H. Matthews [mailto:Lonewolf@maine.rr.com]
Sent: Thursday, August 18, 2005 3:35 PM
To: Robert Bullock
Subject: Re: Shrewsbury Middle School - Data required for Financial Analysis

Either day will be find to meet. Let me know what day will be best for you and I'll be down at 9:00am. I assume the best place would be at the school so we can go over what has to be done to finish the work.

Thank you,

Neal H. Matthews

----- Original Message -----

From: Robert Bullock

To: 'Neal H. Matthews'

Sent: Thursday, August 18, 2005 9:10 AM

Subject: RE: Shrewsbury Middle School - Data required for Financial Analysis

Neal,

I can meet with you Tuesday or Wednesday of next week. Let me know if 9:00 AM either day will work for you.

Robert J. Bullock, PE

Lovett Silverman Construction Consultants Inc.

Phone: 717-796-9595

Fax: 717-766-1715

Cell: 717-422-7518

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From: Neal H. Matthews [mailto:Lonewolf@maine.rr.com]
Sent: Wednesday, August 17, 2005 6:07 PM
To: Robert Bullock
Subject: Re: Shrewsbury Middle School - Data required for Financial Analysis

Dear Bob,

Thank you for taking the time to talk with me. The amount of paper work I have with

oack up is such that transmittal through e-mail or fax may not go through without some interruption. Jackson Construction Co. had all of this information and should have passed it on to St. Paul. I would like to meet with you and see if we can resolve this in a manner that would be to the advantage of St. Paul and myself. Delayed payment and non-payment started in August of 2004 by Jackson and after many months of calls to them and St. Paul I needed to protect my rights under Massachusetts law. This is the only reason that I have filed suit. I have always preferred to have been paid what is owed to me, (Landworks Creations, LLC) and complete this project. I feel that I can do this more cost effective than if you have to hire another contractor. I can make copies of all paper work and bring them with me when we meet. I will put together an overview of the complete amount owed in th!

e format you have sent to me. You may contact me with any questions or comments.

Thank you,

Neal H. Matthews

Landworks Creations, LLC

----- Original Message -----

From: Robert Bullock

To: lonewolf@maine.rr.com

Sent: Wednesday, August 17, 2005 2:42 PM

Subject: Shrewsbury Middle School - Data required for Financial Analysis

Neil,

Here is the text from the letter we send out for the Data required to get started on the ratification:

LSCC is consultant to the St. Paul in connection with the completion of work on the above referenced project. We anticipate work at the site to proceed again immediately and the job to move forward to completion as expeditiously as possible. Jackson Construction Corp will be replaced by G & R Construction, Inc. and future direction of this project will be managed by them.

Please provide the following information to start developing your ratification agreement:

- 1) Original Contract Amount.

- 2) Change Orders to the Original Contract.
- 3) Credit Change orders to Original Contract.
- 4) Value of Work performed to date or Approved Material Stored at Site.
- 5) Total Payments Received from Standen and Jackson.
- 6) Retainage Held to Date.
- 7) Outstanding Balance.
- 8) Last Invoice Paid
- 9) Last Invoice Submitted but not Paid, if any

If you have any questions or comments concerning the above or require anything further in connection with this claim, please give me a call, I can be reached at the following numbers:

Cell 717 422 7518

Fax 717 766 1715

Robert J. Bullock, PE

Lovett Silverman Construction Consultants Inc.

19 Goldenrod Drive

Carlisle, PA 17013

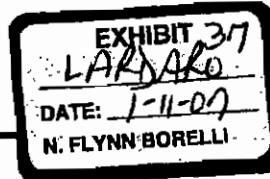
Phone: 717-796-9595

Fax: 717-766-1715

Cell: 717-422-7518

Web Site: Lovett-Silverman.com

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Julie Ciollo

From: Bill Meritz [bmeritz@lovett-silverman.com]
Sent: Wednesday, September 21, 2005 10:26 AM
To: 'Robert Bullock'; 'Al Falango'; tlardaro@lovett-silverman.com
Cc: 'Pedro Rosario'; 'ajwerth'
Subject: RE: Shrewsbury CTC

Bob,

You are correct regarding the Owner's decision to pulverize the track and that the Surety is responsible for 33%.

At the owner's meeting yesterday, Bob Morgado indicated that the district wants the track pulverized (change order) and in addition wants some electrical conduit work performed as no charge in consideration of the electrical damage by the G/C. I requested that Dan please provide us in writing with a proposal. Dan directed the Architect to issue documents regarding their planned changes and demands.

-----Original Message-----

From: Robert Bullock [mailto:rbullock@lovett-silverman.com]
Sent: Wednesday, September 21, 2005 8:56 AM
To: 'Al Falango'; tlardaro@lovett-silverman.com
Cc: 'Bill Meritz'; 'Pedro Rosario'
Subject: RE: Shrewsbury CTC

Under the Committed/Estimated column we included estimated costs for site work \$100,000, landscaping \$250,000, electric \$600,000, Roof \$2,000, and doors \$275,000. These are our best estimates at this time. If we believe this is not enough we should revisit the estimate for each line item.

As for the track, I believe Bill has new information that the owner will agree to a change order to pulverize the existing track, and re-grade.

The surety would be responsible only for the original specified repair of 33% of the track area. G&R is putting together a price to pulverize the track.

-----Original Message-----

From: Al Falango [mailto:afalango@lovett-silverman.com]
Sent: Wednesday, September 21, 2005 9:29 AM
To: tlardaro@lovett-silverman.com
Cc: 'Robert Bullock'
Subject: RE: Shrewsbury CTC

I only see sub costs I'm concerned there's not enough there to cover them

-----Original Message-----

From: Tony Lardaro [mailto:tlardaro@lovett-silverman.com]
Sent: Wednesday, September 21, 2005 9:25 AM
To: Al Falango
Subject: Re: Shrewsbury CTC

Aren't we carrying estimated dollars in the CTC (outside the contingency amount) for these items already? -----Original Message-----

From: "Al Falango" <afalango@lovett-silverman.com>
Date: Wed, 21 Sep 2005 09:07:36
To: "'Tony Lardaro'" <tlardaro@lovett-silverman.com>, "'Robert
 Bullock'" <rbullock@lovett-silverman.com>
Cc: "'Bill Meritz'" <bmeritz@lovett-silverman.com>,
<awerth@lovett-silverman.com>
Subject: Shrewsbury CTC

On the Shrewsbury CTC

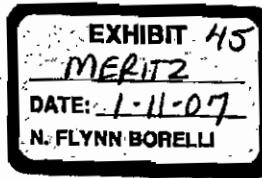
The C/O logs lists all c/o's as pco's are they approved change orders or still pco's

Bill Meritz had mentioned a slew of potential c/o's for work done by JCC for the town under protest, (Tony wants AJ to pick this up) should we make mention of these potential receivables even if we cant put a number on them.

I dont think the 825k is enough for the contingency we already know we have busts in the track work, site work , electric (major), roofs and doors (major) even though the town is holding money I still think we could possibly break the 800k mark with these, we've already spent 400k on G and R for one month and we still dont have checks for the subs. We can try to bang the subs but I think that we can never recover from them what we are spending.

Robert Bullock

From: Bill Meritz [bmeritz@lovett-silverman.com]
Sent: Thursday, September 08, 2005 11:26 AM
To: 'Al falango'
Cc: 'Robert Bullock'; 'Pedro Rosario'; 'Tony Lardaro'
Subject: Shrewsbury Middle School- Job Progress meeting 9/6/05



Gentlemen:

I attended the meeting at the Town of Shrewsbury offices; In attendance were:

Katie Crocket	LPA
Mike Pagano	LPA
Dan Morgano	Town of Shrewsbury
Robert Cox	Town of Shrewsbury
Bob Morel	G & R Construction
Jason Goodwin	G & R Construction
Dave Willet	G & R Construction
Duffy Lanciani	Clerk of the Works
Jack Ferguson	CTM
Rich Melanson	Griffin Electric

The following is a summary of the discussions:

Mike Pagano requested a status report pertaining to contract ratifications. I provided them with a status of each subcontractor listed by the Architect as having an impact on the project concerning finishing the work. Dan Morgano asked weather the Surety has issued checks to the subcontractors yet. I indicated that we have requested checks for many of them and others we were still finalizing their ratifications.

Dave Willet indicated that several contractors were working without ratifications.

Mike Pagano asked for a status report on Occupancy issues pertaining to Gerald Laflamme (Fire Chief) email of 8/28/05 received from John Sabonaitis. I indicated that Griffin Electric will verify that all work described in the contract documents will be provided. The Architect will review this "Wish List" from the Fire Chief and will begin preparing affidavits for issuance to the school. I also indicated that any work outside the contract will be treated as a change order. Mike Pagano will be contacting the Fire Marshall.

G & R reported the following:

Painting: The painter will be switching to nights next week in order to continue the painting punch list.

Flooring: Replacement of VCT tiles as per the punch list is complete. The Architect will reinspect. Issues remain with the blue VCT (different color). G & R has ordered a closer replacement tile for the blue for attic stock. The architect will review. The blue tile installed as per punch list work is a problem throughout the building.

Room 485 (Phys Ed) – G & R reported that the floor is scheduled to be completed by weeks end. Underlayment application and repair of the access frame have been completed to correct the tripping hazard. Vinyl base is back ordered. The architect will punch out this area next week.

Boys and Girls Locker Rooms – G & R reported that nearly all the Architect's punch list items have been completed. Upon completion G & R will have these areas cleaned and ready for the Architect's inspection next week. The handicap chair lift has been certified. G & R has requested paperwork from AFCO.

Electrical Work: Griffen reported that 85% of the interior electrical work has been completed. Issues regarding outstanding fixture lenses in room 485 remain outstanding. Fixture lenses (<12) were scavenged from this room and installed in classrooms. The lenses are on back order. Griffen requested that this order be expedited via

overnight delivery. (LSCC requested a price). In any event Griffen will install temporary lenses prior to the room being completed. Griffen repaired defective wiring for pole lights in the front of the building and determined that these nonlit lights were a district problem (Bob Cox Agreed). It was determined that lights in the rear of the building do not work due to contractor damage (1 Pole light) and incomplete conduits and wiring at two other locations. Griffen will issue a cost to complete repairs. Additionally, the single pole light diagonally across from the generator will have to be powered up by digging a trench 300' to the nearest pole beneath grass. Griffen will provide a sketch to the Architect. As far as the lighting around the track, Griffen indicated that power to only 1 pole from the service panel could be determined. Griffen has concerns regarding the existing underground track lighting feeders as well as the existing service panel. I asked Griffen to issue a report based upon their findings. The issue of restrikes for the front canopy lighting was discussed. It appears that perhaps they are only needed at the front entrances. The architect will investigate this and report.

Canopy Work – Bob Morel reported that they have a contractor on board to complete the canopy once the lighting issue has been settled. The Architect questioned the frost protection wiring and Griffen indicated that the wiring is incomplete. Furthermore the Architect indicated that bug screens need to be installed at the louvers at both ends of the canopy. Jack Ferguson of CTM said that perhaps the Architect should examine the steel work at the canopy/front entrance intersection. The Architect will have their structural engineer examine the installation. Katie indicated that all rusting metal be addressed.

Windows/Window Repairs – The Architect indicated that the installed windows in the gymnasium were of the wrong type of glass (punch list). G & R is in contact with Architectural Windows concerning this matter. LSCC will follow up. G & R will review the window repair work performed by Architectural Windows. Duffy Lanciani is also reviewing the window repair work per the CCD issued as a C/O to Jackson/Architectural windows.

AFCO – G & R reported that the handicap lift has been certified. AFCO still needs to address items pertaining to the installed cafeteria/ snack bar stainless steel roll up doors. Additionally, the overhead door operator in at the left side of the maintenance garage and the door track on the left side was damaged during construction and needs replacement. G & R will be contacting AFCO.

Work Schedule – Mike Pagano raised the issue of a completion schedule for all the outstanding work. He stated that although this is a requirement, both the owner and the architect are willing to temporarily waive this requirement considering the fact that G & R have been successful in coordinating all interior work with the school principal. However, the owner needs a written schedule with completion dates as soon as possible. Bob Morel indicated that they will be on site throughout the Christmas break and will need to return in the spring to fertilize the fields.

Site Work – Bob Morel reported that negotiations are continuing with subcontractors and Bob Bullock of LSCC. The Architect indicated that the contact documents specifically indicate that temperature sensitive work can not be performed when ambient outside temperatures fall below 45 degrees. Furthermore, Bob Morel indicated that he has meetings planned with another site contractor and plans to begin work by the end of next week.

General Meeting Notes

Track Lighting

Based upon their investigation, Griffen Electric has determined that 2 four inch trunk lines each carrying 8 # 8 conductors go to two separate light poles from the existing service panel. One trunk line to the nearest pole can be electrified. The other trunk line to the opposite pole no longer exists. He one inch conduit installed between the two opposite light poles is too small to carry the necessary conductors. The existing buried conduits and splice boxes between the poles have problems. Bob Cox indicated that the wiring is indeed old and suspect and should be replaced. He asked if the Surety would be willing to install new conduits for the purpose of installing new wiring for the site lighting or perhaps negotiate a change order. This offer was summarily dismissed by Mike Pagano and Bob Morgano who indicated that the contractor was responsible for restoring all site lighting. At that moment Bob Cox left the meeting. Katie Crockett indicated that the demolition contractor caused all the damage and they expect the site lighting to be restored. Dave Willet asked about the status of the uninstalled electrical vault. The architect will investigate and review the site electrical drawings.

To summarize, issues with the site lighting abound. Griffen will produce a report for us to review. The existing equipment, conduits, and wiring may not be code compliant. Griffen has serious concerns about repairing the existing wiring and reenergizing it. We will need the architect to direct us in writing on how to proceed with respect to the contract drawings.

Lockers

I indicated that I am still awaiting documents pertaining to change orders and credits from PENCO. Dave Willet indicated that they have already been on site working to address punch list items.

G & R Invoices

Jason Goodwin reported that he is still preparing AIA forms for both the Surety and the owner. Katie Crockett requested that G & R submit to her a report on all items completed per her punch list for inspection purposes.

Bob Morgado reported that the Surety has yet to address direct payments by the Town as well as back charges. He explained to all that all retainage was paid to Jackson upon substantial completion (I was under the impression that substantial completion was never attained!) and that the remaining contract balance represents the value of the monetized punch list. Dan told G & R to requisition per the monetized punch list.

Site

Dan Morgado indicated that it is imperative that the site work begin while time permits.

Mike Pagano indicated that the football field and baseball infields were still under warranty by the contractor and that they were responsible for maintenance and security.

Dan Morgado indicated that in the event that the football field could not be used, the district was prepared to transport the teams to other sites and back charge the Surety.

G & R agreed that we can work around this issue with regards to the peewee football people.

Duffy Lanciani asked the architect to provide the latest field drawings as well as all SK Drawings.

Bob Cox indicated that a school fair is scheduled for September 24, 2005 at the front lawn and requested that G & R address any safety issues.

Tunnels

Final inspection report and sign off remain outstanding.

Work Force

G & R gave a brief review of project manpower.

Project Directory

Katie Crockett requested that G & R provide a complete project directory with copies sent to all attendees.

Next Meeting

The next meeting is scheduled for 1pm at Town Hall on Tuesday, September 13, 2005.

Sincerely,

Bill Meritz

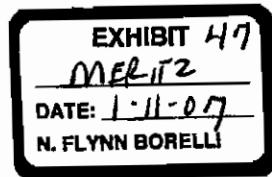
Lovett Silverman Construction Consultants, Inc.

Hauppauge, New York

Telephone: (631) 979-7600; Facsimile: (631) 979-7602

www.lovett-silverman.com

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Julie Ciollo

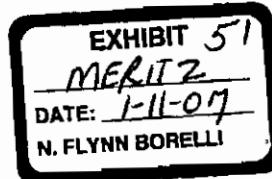
From: Jason Goodwin [jgoodwin@grconstruction.net]
Sent: Thursday, September 15, 2005 12:58 PM
To: rfuller@stpaultravelers.com; wwerner@stpaultravelers.com; jpeters@stpaultravelers.com
Cc: Robert Bullock; afalango@lovett-silverman.com; bmeritz@lovett-silverman.com; Bob Morel
Subject: subcontractor ratifications

Good afternoon,

G&R has contacted several of the key subs needed to complete the project. They have been very cooperative up to this point; however they will not come back to the job and perform any work until they have received payment. It is my understanding that Lovett-Silvermann has all the paper work is in place for these ratifications. G&R is making every effort to complete the work outlined, but it is imperative that we have these key subs on site. G&R is at a stand still in a lot of areas. Please advise on how we are to proceed. Thank you.

Jason Goodwin
jgoodwin@grconstruction.net

G&R Construction Co., Inc.
150 Wood Road
Suite # 1000
Braintree, MA 02184
T (781) 849-9093 x102
F (781) 849-9094



Page 1 of 1

Robert Bullock

From: Bill Meritz [bmeritz@lovett-silverman.com]
Sent: Monday, January 16, 2006 2:45 PM
To: 'Robert Bullock'
Subject: Jackson Construction "Completion Game Plan"
Attachments: DOC (72).pdf

Bob, I located Jackson Construction's "Oak Middle School Game Plan". A copy is attached

It is worth noting that Frias Concrete poured the sidewalks at the front entrance (all of them)? As you know they are not included in the Committed Cost Report. They were probably a sub to Landworks.

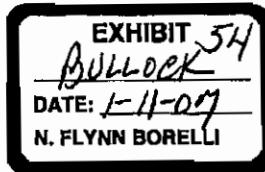
Please see page 2 Woods and Plastics – Bristol (Note J and S Door Installation Services)

Sincerely,
Bill Meritz
Lovett Silverman Construction Consultants, Inc.
Hauppauge, New York
Telephone: (631) 979-7600; Facsimile: (631) 979-7602
Cell Phone: (631) 335-8970
www.lovett-silverman.com

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Message

Page 1 of 1

Julie Ciollo

From: Al Falango [afalango@lovett-silverman.com]
Sent: Wednesday, August 17, 2005 2:56 PM
To: 'Robert Bullock'
Subject: RE: Shrewsbury - Landworks

Dont do that if you haven't done it already

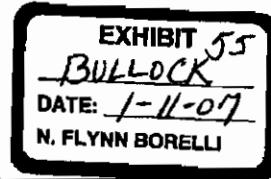
-----Original Message-----

From: Robert Bullock [mailto:rbullock@lovett-silverman.com]
Sent: Wednesday, August 17, 2005 2:33 PM
To: 'Al Falango'
Subject: Shrewsbury - Landworks

The president of Landworks just called me and expressed an interest in being ratified. I told him he will have to drop his law suit, but welcomed this idea and I forwarded the requirements for ratification and my contact information

Message

Page 1 of 1

**Julie Ciollo**

From: Al Falango [afalango@lovett-silverman.com]
Sent: Thursday, August 18, 2005 11:56 AM
To: 'Robert Bullock'
Subject: RE: Shrewsbury - Land works

Bob

Pull back on land works sorry for the misinformation this morning

-----Original Message-----

From: Peters Jr,James Michael [mailto:JPETERS@stpaultravelers.com]
Sent: Thursday, August 18, 2005 10:49 AM
To: Al Falango; Fuller,Russell W
Cc: Robert Bullock; bcarver@hinshawlaw.com; Werner,William R
Subject: RE: Shrewsbury - Landworks

We are presently a defendant in a legal action brought by Landworks against Jackson Construction and USF&G. The underlying issue is a dispute regarding their sitework subcontract on the Shrewsbury Middle School project. If Landworks is interested in settling that legal action and resuming their work, they should communicate that desire through their counsel to Brad Carver who represents USF&G in that litigation.

By copy of this email to Brad Carver, I am giving him notice of this issue.

James M. Peters, Jr.
 St Paul Travelers Bond Claim
 One Tower Square - 4 PB
 Hartford, CT 06183

Tel: (860) 954-6497
 Fax: (860) 277-5722
 Email: james.m.petersjr@stpaultravelers.com

-----Original Message-----

From: Al Falango [mailto:afalango@lovett-silverman.com]
Sent: Wednesday, August 17, 2005 3:00 PM
To: Fuller,Russell W; Peters Jr,James Michael
Cc: 'Robert Bullock'
Subject: Shrewsbury - Landworks

Russ

The president of Landworks called LSCC and expressed an interest in being ratified. Should we pursue this guy , I know you have issues with him.

Message

Page 1 of 1

Julie Ciollo

From: Peters Jr,James Michael [JPETERS@stpaultravelers.com]
Sent: Thursday, August 18, 2005 10:49 AM
To: Al Falango; Fuller,Russell W
Cc: Robert Bullock; bcarver@hinshawlaw.com; Werner,William R
Subject: RE: Shrewsbury - Landworks

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By copy of this email to Brad Carver, I am giving him notice of this issue.

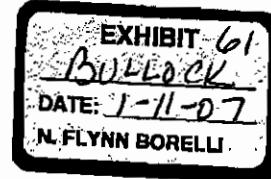
James M. Peters, Jr.
St Paul Travelers Bond Claim
One Tower Square - 4 PB
Hartford, CT 06183

Tel: (860) 954-6497
Fax: (860) 277-5722
Email: james.m.petersjr@stpaultravelers.com

-----Original Message-----

From: Al Falango [mailto:afalango@lovett-silverman.com]
Sent: Wednesday, August 17, 2005 3:00 PM
To: Fuller,Russell W; Peters Jr,James Michael
Cc: 'Robert Bullock'
Subject: Shrewsbury - Landworks

Message



Page 1 of 1

Robert Bullock

From: Al Falango [afalango@lovett-silverman.com]
Sent: Monday, July 18, 2005 8:55 AM
To: 'Robert Bullock'
Subject: FW: Shrewsbury

---Original Message---

From: Rick Noblet [mailto:moblet@lovett-silverman.com]
Sent: Monday, July 18, 2005 8:27 AM
To: 'Al Falango'
Subject: RE: Shrewsbury

Hi Al,

I just got back from my F-in vacation. I don't know if you are all set on this or not but I used a contractor on a Case at a School in Lakeville/Freetown Mass. They were outstanding and were very professional with a great product. M.O. N. Landscaping Inc. There office is in N. Dartmouth, MA. 1-508-679-3994. I worked with a Superintendent named Paul Bernardo (Cell 1-508-612-1108). He may not remember my name as I stopped by once a week or so and asked questions. We never had a first name relationship. They built soccer fields, baseball fields (4) with sodded infields, raised pitchers mounds, a practice football field, replaced shrubs and plants, watered, fertilized, and fixed a poorly installed and not working irrigation system on a very large area including changing the programmable timing system on which Zone to water next. Emanuel Bros. I also used but they have grown considerably and I am not sure how much work you have. I know they are in the North Suburbs (Chelmsford I think) of Boston, I used them on a Sewage Treatment Plant in Northbridge, MA. They did lawn, site work, shrubs, beds, flowers, and hydro mulch/seeding of settlement basins etc. I don't have a name or number but I am sure they are in information. I worked with a Rick (general superintendent) but I don't have any other information. They are good but seemed to want more volume jobs. They came in and blew out the entire job in a few days and disappeared. They did fine but I wanted them to come do some areas when they were ready (kind of piece meal) and they chose to overrun the place with people. It worked, looked good and the client was happy. They also watered every day all summer until the job was sold. Rick

From: Al Falango [mailto:afalango@lovett-silverman.com]
Sent: Monday, July 11, 2005 12:43 PM
To: 'Michael Melnick'; 'Rick Noblet'
Subject: Shrewsbury

I need the numbers of some site guys that can handle a substantial amount of school site work, minor drainage, grass prep and planting etc.

Any names you have would be a big help.

03/23/2004 10:27 17813441048

HARTFORD ROOFING

PAGE 02

SUBCONTRACTOR HOLD AGREEMENT
CONDITIONAL PARTIAL RELEASE

Principal:	Standen Contracting Company, Inc.	<u>Landworks</u>
Project:	Shrewsbury Middle School	Subcontractor
Project Owner:	Town of Shrewsbury, MA	
Claim No.:	04008WS041295001	Board No.: SW5041

I (we) am (are) a subcontractor to Standen Contracting Co., Inc. on the above-named contract for the work on the above described project. A copy of the subcontract and approved change orders are attached hereto as Exhibit A and by this reference fully incorporated herein.

1.	Amount of my (our) original subcontract/purchase order:	\$824,823.00
2.	Changes in subcontract amount approved by <u>Standen Contracting Co., Inc.</u> :	\$ 73,221.00 *
3.	Total or adjusted subcontract amount:	\$898,044.00
4.	Value of work performed and/or approved material stored at job site through <u>3/1/04</u> :	\$643,325.47
5.	Total payments received from <u>Standen Contracting Co., Inc.</u> :	\$433,544.00
6.	Net amount due through <u>3/1/04</u> :	\$177,614.60 PD
7.	Retainage on No. 4 above:	\$ 32,166.27
8.	Value to be performed after <u>3/1/04</u> :	\$254,718.53

In consideration of my (our) being paid within ten days from the date of this Agreement by United States Fidelity & Guaranty or their successors or assigns (collectively Surety), the net amount of \$177,614.60 due (No. 6 above) and its agreement to pay me (us) our retainage of \$32,166.27 (No. 7 above) within 30 days of acceptance of the project by the Owner, the expiration of the applicable lien or claim period and Surety's actual receipt of the retainage from the Owner, I (we) hereby agree to perform the balance of the work amounting to \$254,718.53 (No. 8 above) as a subcontractor in accordance with the terms and conditions of the Undersigned's subcontract with Standen Contracting Co., Inc.. In further consideration of the payment of the sum stated in No. 6 above paid by Surety and when the check has cleared the bank and has been paid, this agreement shall release and forever discharge Surety from all actions, causes of action, claims and demands that the Undersigned, any heirs, legal representatives, or assigns of the Undersigned may now have or arising out of any of the work performed on the above-referenced project, but only to the extent of the payment set forth in No. 6 above and through the date set forth in No. 4 above. If there are any exceptions, they are noted on the attached sheet. The Undersigned hereby agrees to perform the balance of the work as a subcontractor for the Surety or Surety's designee or assigns in accordance with the terms and conditions of the Undersigned's subcontract.

IT IS FURTHER UNDERSTOOD AND AGREED that the Undersigned, to the extent of the payment made hereunder, hereby assigns its claims for labor, material, or equipment rental, lien rights, stop notice rights and causes of action against Standen Contracting Co., Inc. and the Owner to Surety with the Undersigned appointing Surety its irrevocable attorney to demand payment for and enforce payment of said items, stop notices, and causes of action, including, but not limited to, bringing suit hereon, providing releases therefore, and taking all steps to perfect the same, and all at the Surety's sole discretion, election and expense.

IT IS FURTHER UNDERSTOOD AND AGREED that the agreement of Surety or its designee or assigns to pay retainage or any future payments is subject to any defenses or claims of the principal, the Surety or its designee or assignee has or may have arising out of the subcontract that exist now or that may arise in the future that entitle the Owner, the principal or Surety and/or its designee or its assigns to back charge, set off, or deduct from the retainage or any future payments any amounts for which the Undersigned may be or is responsible for. The execution of this Agreement shall not waive or estop the Surety from raising any such defenses or claims.

03/23/2004 10:27 17813441040

HARTFORD HOLDING

PAGE 03

IT IS FURTHER UNDERSTOOD AND AGREED that Surety is in the process of negotiations with the Owner on the referenced contract. If proper arrangements can be made with the Owner for takeover and relief of this project your subcontract, purchase order, change orders or agreement may be assigned to a new general contractor or construction manager. The continued use of you as a subcontractor on this project is at the sole discretion of Surety and is further conditioned upon approval by the compilation contractor and/or Owner. If it is determined by Surety to either not use you as a subcontractor or assign your subcontract agreement, then any retainer held will be directed to you within 30 days after project acceptance and retainage are released by the Owner and received by Surety assuming there are no backcharges, credits or claims against you.

IT IS FURTHER UNDERSTOOD AND AGREED that the Undersigned certifies that any labor, material, and/or subcontractor furnished by the Undersigned, was actually furnished, delivered, or used in construction of the aforementioned project.

THE UNDERSIGNED FURTHER WARRANTS AND REPRESENTS AND HEREBY certifies that all just and lawful billings, accounts and/or amounts due from the undersigned and/or its subcontractors or material suppliers for labor, material, equipment employed in the performance of this contract have been fully paid in accordance with the terms and conditions of said contract(s) and that there are no amounts for which the undersigned would be responsible under the above agreement, all amounts having been fully paid and other terms of the relevant subcontract, material supply contract or purchase order having been fully complied with by the undersigned.

IT IS FURTHER UNDERSTOOD AND AGREED that the Undersigned covenants with Surety and the Owner that the money received hereby will be treated as trust money, and used to pay all persons or companies who have furnished labor and/or materials at the subcontractor's request on the aforementioned project, and that a good and sufficient release of all claims and waiver of lien will be obtained from all such persons or companies. In addition, all costs incurred by Surety because of failure to obtain such waiver and release of all claims, or arising from any breach of these covenants or promises made in this Agreement, including any attorney's fees reasonably incurred thereby, will be paid by the Undersigned.

IT IS FURTHER UNDERSTOOD AND AGREED that the Undersigned has carefully read this Hold Agreement and the same is signed with the proper authority as the true act and deed of said Undersigned.

DATED this 23 day of March, 2004

(Subcontractor)

By: David T. Mullin
Title: Owner

DATED this 24 day of March, 2004

(Surety) VSFs
By: J. M. Hart, Senior Claim Attorney
Authorized Representative

* Additional \$9,864.00 in potential change order for unresolved C/O work to be reviewed and negotiated if found valid by LSOC and Jackson CC.

EXHIBIT F

CIVIL ACTION COVER SHEET		DOCKET NO.(S)	Final Court of Massachusetts Superior Court Department County: <i>Middlesex</i>												
PLAINTIFF(S) <i>Hermes Engineering</i>		DEFENDANT(S) <i>USP Ext-Jackson Const Co</i>													
ATTORNEY, FIRM NAME, ADDRESS AND TELEPHONE <i>Ros Metzger, PO Box 1455 Pian. MA 01701 5088727116</i> Board of Bar Overseers number: <i>SB 4745</i>		ATTORNEY (if known)													
Origin code and track designation															
Place an x in one box only: <input checked="" type="checkbox"/> 1. F01 Original Complaint <input type="checkbox"/> 2. F02 Removal to Sup.Ct. C.231,s.104 (Before trial) (F) <input type="checkbox"/> 3. F03 Retransfer to Sup.Ct. C.231,s.102C (X) <input type="checkbox"/> 4. F04 District Court Appeal c.231, s. 97 &104 (After trial) (X) <input type="checkbox"/> 5. F05 Reactivated after rescript; relief from judgment/Order (Mass.R.Civ.P. 60) (X) <input type="checkbox"/> 6. E10 Summary Process Appeal (X)															
TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)															
CODE NO. <i>EOS</i>	TYPE OF ACTION (specify) <i>Breach of contract Breach of warranty</i>	TRACK <i>(A)</i>	IS THIS A JURY CASE? <i>() Yes () No</i>												
The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.															
TORT CLAIMS															
(Attach additional sheets as necessary)															
A. Documented medical expenses to date: <table> <tr> <td>1. Total hospital expenses</td> <td>\$</td> </tr> <tr> <td>2. Total Doctor expenses</td> <td>\$</td> </tr> <tr> <td>3. Total chiropractic expenses</td> <td>\$</td> </tr> <tr> <td>4. Total physical therapy expenses</td> <td>\$</td> </tr> <tr> <td>5. Total other expenses (describe)</td> <td>\$</td> </tr> <tr> <td colspan="2" style="text-align: right;">Subtotal \$</td> </tr> </table>				1. Total hospital expenses	\$	2. Total Doctor expenses	\$	3. Total chiropractic expenses	\$	4. Total physical therapy expenses	\$	5. Total other expenses (describe)	\$	Subtotal \$	
1. Total hospital expenses	\$														
2. Total Doctor expenses	\$														
3. Total chiropractic expenses	\$														
4. Total physical therapy expenses	\$														
5. Total other expenses (describe)	\$														
Subtotal \$															
B. Documented lost wages and compensation to date															
C. Documented property damages to date															
D. Reasonably anticipated future medical and hospital expenses															
E. Reasonably anticipated lost wages															
F. Other documented items of damages (describe) \$															
G. Brief description of plaintiff's injury, including nature and extent of injury (describe) \$															
\$															
TOTAL \$															
CONTRACT CLAIMS															
(Attach additional sheets as necessary)															
Provide a detailed description of claim(s): <i>Failure to pay subcontractor on Public project</i>															
TOTAL \$ 624,265.															
PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT															
"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."															
Signature of Attorney of Record		DATE: <i>8/17/05</i>													

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO:

HERMES ENGINEERING, INC.

)

)

Plaintiff

)

)

v.

)

VERIFIED COMPLAINT

)

UNITED STATES FIDELITY AND
GUARNTY COMPANY and JACKSON
CONSTRUCTION CO.

)

)

)

Defendants

)

1. Plaintiff, Hermes Engineering, Inc. ("the Plaintiff") is a Massachusetts corporation with a principal place of business at 60 Tripp Street, Framingham, Middlesex County in the Commonwealth of Massachusetts.
2. Defendant, Jackson Construction Co. ("the Defendant") is a Massachusetts business with an address of 20 Dan Road in Canton, Norfolk County, in the Commonwealth of Massachusetts.
3. Defendant, United States Fidelity & Guaranty Co. ("the Surety") is an insurance company with a place of business at 124 Grove Street, Franklin, Norfolk County, in the Commonwealth of Massachusetts.
4. The Defendant entered into a contract with the Plaintiff under which the Plaintiff agreed to perform certain construction work for the Defendant at the Hull High School in Hull, Massachusetts. ("the Project")

5. The Plaintiff is the Division 15 HVAC Contractor at the Project and is thus subject to, and entitled to, the protection and remedies of G.L. c. 149, which directs the conduct of public construction projects.
6. The Defendant agreed to pay the Plaintiff for the work performed by the Plaintiff on its behalf.
7. The Plaintiff performed its contractual obligations, providing invoices for work performed on behalf of the Defendant.
8. Notwithstanding the Plaintiff's performance and acceptance of the work, the Defendant had not paid the Plaintiff for the Plaintiff's work.
9. The Plaintiff is owed \$624,265.53 for work performed on behalf of the Defendant at the Project.
10. The Defendant failed to perform its obligations to the Town of Hull, and has been terminated from the Project; leaving the Plaintiff unpaid.

COUNT I
BREACH OF CONTRACT
HERMES v. JACKSON

11. The Plaintiff restates paragraphs 1-10 and incorporates them herein by reference.
12. The Defendant's failure to pay the Plaintiff for completed services constitutes a breach of the contract between the Plaintiff and the Defendant.
13. As a result of the Defendant's breach, the Plaintiff has sustained the loss of its expectancy under the contract, and has sustained incidental and consequential damages foreseeable at the time of contract formation.

COUNT II
QUANTUM MERUIT
HERMES v. JACKSON

14. The Plaintiff restates paragraphs 1-13 and incorporates them herein by reference.
15. The Plaintiff has provided work worth \$624,265.53 for which it has not been compensated, as demonstrated on the attached Exhibit A.
16. The Defendant has received the benefit of this work and has been otherwise unjustly enriched as a result of the Plaintiff's work.
17. The Defendant owes the Plaintiff the value of the work.

COUNT III
BREACH OF IMPLIED COVENANTS
HERMES v. JACKSON

18. The Plaintiff restates paragraphs 1-17 and incorporates them herein by reference.
19. The Defendant's conduct, as described herein, did breach the implied covenant of good faith and fair dealing which is contained within each contract in the Commonwealth.
20. As a result of this breach, the Plaintiff has been harmed.

COUNT IV
BREACH OF M.G.L. c. 93A §11
HERMES v. JACKSON

21. The Plaintiff restates paragraphs 1-20 and incorporates them herein by reference.
22. Both parties to this dispute are engaged in trade and commerce.
23. The Defendant's conduct, as described herein, went beyond mere breach of contract, to egregious and heavy-handed attempts to extort concessions and otherwise deprive the

Plaintiff of its legal rights, and to otherwise deny the Plaintiff its rights under the contracts based upon superior economic position.

24. The Defendant's conduct, as described herein, was unfair and deceptive under M.G.L. c. 93A, which proscribes this type of conduct.
25. As a result of this breach, the Plaintiff has been harmed in its business.

COUNT V
VIOLATION OF G.L. c. 149 §29
HERMES v. USF & G

26. The Plaintiff restates paragraphs 1-25 and incorporates them herein by reference.
27. The Defendant was bonded by the Defendant, United States Fidelity & Guaranty Co.
28. The Defendant failed to complete its payment obligations at the Project with regard to the sums owed to the Plaintiff.
29. The Plaintiff has performed its work under the Jackson contract, and is owed funds by the Defendant for the work performed.
30. The Plaintiff gave timely notice of its claim to the Surety as required under G.L. c. 149 §29.
31. The Surety has failed to make timely payment, and to otherwise comply with the provisions of c. 149 §29, which are intended to provide security to the Plaintiff for payment on public projects.
32. The Defendant has failed to pay the Plaintiff for work performed at the Project.

COUNT VI
VIOLATION OF G.L. c. 93A and 176D
HERMES v. USF & G

33. The Plaintiff restates allegations 1-32 and incorporates them by reference.

34. Notwithstanding that liability was reasonably clear, the Defendant has declined to make full settlement of the claim, without cause or excuse.

35. The Plaintiff has made demand for its funds, a demand which has been ignored.

36. As a result of this conduct, the Plaintiff has been harmed in its business.

WHEREFORE, the Plaintiff respectfully prays that this Honorable Court:

1. Enter judgment for the Plaintiff as pled in Counts Count I-III and ordering an award of damages in the amount of \$624,265.53;
2. Enter judgment for the Plaintiff as to Count IV, and ordering the trebling of damages and the award of attorney's fees;
3. Enter judgment for the Plaintiff as to Count V, requiring the surety to pay the sum awarded forthwith,;
4. Enter judgment for the Plaintiff as to Counts VI, and ordering the trebling of damages and the award of attorney's fees and
5. Any further relief deemed just and appropriate by this Honorable Court.

THE PLAINTIFF DEMANDS A TRIAL BY JURY

Respectfully Submitted,
Hermes Engineering, Inc.
By its attorney

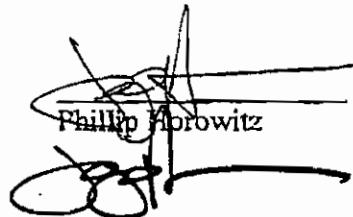
Robert N. Meltzer, BBO #564745
PO Box 1459
Framingham, MA 01701
Phone: (508) 872-7116
Telecopier (508) 872-8284

Dated: August 17, 2005

VERIFICATION

I, Phillip Horowitz, an officer of Hermes Engineering, Inc. and duly authorized to sign this document on behalf of the corporation, do hereby certify that I have reviewed the attached document, and that the facts contained herein stating the funds owed are true to the best of my knowledge and belief, and represent a true and accurate accounting of the funds due and owing to Hermes Engineering, Inc.

Signed under the pains and penalties of perjury this 4th day of August, 2005



Phillip Horowitz

Hermes Engineering, Inc.
Mechanical Contractors

60 Tripp Street • Framingham, MA 01702-8751 • (508) 270-8842 • FAX (508) 270-9146

June 15, 2005

Town of Hull
School Building Committee
7 Hadassah Way
Hull, MA. 02045
Certified Mail/Return Receipt: 7005-1160-0003-7876-0218

DEMAND FOR DIRECT PAYMENT

Subtrade: Hermes Engineering, Inc. (HVAC)
G.C.: Jackson Construction Company
Project: Hull High School, Hull, MA.

Hermes Engineering, Inc. has substantially completed our subcontract work on the above project in accordance with the Plans and Specifications and request payment of the entire balance due under our subcontract from the General Contractor (Jackson Construction Company), who has failed to pay. This is a written demand for the balance of \$511,277.82 due under the subcontract, a breakdown of which is as follows:

Subcontract Price:	\$1,831,750.00
Plus Change Orders:	
CO#1 Furnish & Install Insulated Dampers in Stage Area	\$10,760.00
CO#2 Provide Gas Burners on Existing Steam Boilers	\$12,000.00
CO#3 No Description – Back Charge	(\$ 511.00)
CO#4 No Description – Back Charge	(\$ 640.00)
CO#5 Disagree Mason did not do Coordination	(\$1,185.00)
CO#6 Water Damage	\$ 580.00
Pan for RAC-1 11/13/03 (see revised)	\$4,581.52
Total Change Order Work Approved:	25,585.52
Total Subcontract with Change Orders:	\$1,857,335.52
Completed Pending Work:	
1. Combustion Air Louver sub. 9/26/03	\$ 1,708.56
2. Replace Spec. Return Grills @ Stage w/ Black Iron	\$ 878.76
3. Add End Panels to 14 Unit Vents in Phase II. Shelving Units will be 15 ¼" deep.	\$ 2,056.88
4. Holes for Ductwork were cut by Jackson Construction (see attached)	\$ 1,078.54
5. Remove & Reinstall Ductwork due to corrective work In Library	\$ 506.19
6. No Gas/Frozen Coils – 1/16/04	\$ 5,032.33
7. Modify Cabinet Unit Heaters to fit in existing conditions (Service Order #1587)	\$ 422.82
8. Remedial work in Cafeteria (Service Order #2442)	\$ 1,562.00
9. Replace Cabinet Unit Heaters due to Water Damage	\$ 895.00
10. Add 10'0" to Existing Flue	\$ 3,000.00
11. Temporary Heat	\$59,576.06
12. Maintenance of Temporary Heat	\$18,981.00
13. Phase I-IIIA Coord. Dwgs. & Existing Conditions	\$44,564.04
14. Phase I Roofing Delays	\$28,088.52
15. Phase I Approvals of HVAC Equipment	\$30,531.00
16. Phase I Approval of Color Selection	\$28,088.52
17. Phase II Coord..Dwgs.	\$10,584.08

18. Phase II Roofing Delays	\$ 3,256.64
19. Phase II Shelving Installation Delay	\$ 4,884.96
20. Phase II Arch./Clerk non-payment	\$25,238.96
21. Phase II Moving delays	\$24,424.80
22. Phase III Schedule Abatement to Coord. Dwgs.	\$11,398.24
23. Phase III Impact Notice 2/4/04	\$20,354.00
24. Phase III Failure to Cut 7 openings	\$ 6,513.08
25. Phase III Unable to order Shelving	\$ 4,884.96
26. Phase III Failure to Install Louvers	\$ 3,256.64
27. Phase III Failure to Form & Pour Pad	\$ 720.48
28. Phase III Roofer Delay	\$11,398.24
29. Phase III Incorrect Blocking for Shelving	\$ 2,442.48
30. Phase IIIA Returns & Grilles	\$ 6,965.72
31. Phase IIIA Roofing Delays	\$13,026.56
32. Phase IIIA On-Job Delays	\$26,098.66
33. Demolition	(\$36,000.00)
34. Cleaning	(\$11,790.00)
35. Delays	(\$31,000.00)
36. Masonry Work	(\$ 7,417.00)
37. Frozen Sprinklers	(\$ 2,063.10)
Total Pending Work:	\$402,418.72
Total with Pending Work:	\$2,259,754.24
Total Payments:	\$1,635,488.71
Total Balance Due:	\$624,265.53

Please make direct payment to us of \$511,277.82, the entire balance less \$112,987.71 (5% retainage), in accordance with chapter 30, section 39F of the General Laws.

Hermes Engineering, Inc.

By: _____
Phillip E. Horowitz, President

On this ____ day of June, 2005, before me the undersigned notary public, personally appeared _____ proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document who swore or affirmed to me that the contents of the document are truthful and accurate to the best of his knowledge and belief.

Notary Public:

My Commission Expires:

CC. General Contractor: Jackson Construction Company - 7004-2510-0000-0827-2899

Bonding Company: U.S. Fidelity & Guaranty Company - 7004-2510-0000-0827-2905

Architect: Architecture Involution, LLC (Ai3) -7005-1160-0003-7876-0225

Attorney: Robert Meltzer

**SUBCONTRACTOR RATIFICATION AGREEMENT
CONDITIONAL PARTIAL RELEASE
AND INDEMNITY AGREEMENT**

Principal:	Jackson Construction Co.	Hermes Engineering, Inc.
		Subcontractor

Project: Hull High School – Hull, MA

Project Owner: Town of Hull, MA

Claim No.: 090-SC-SK383501-RG

Bond No.: SK3835

I (we) am (are) a subcontractor on the above-named contract for the work described as follows:

Describe scope of work: HVAC

Specification Section(s):

1. Original Subcontract Amount	<u>1,831,760.00</u>
2. Approved Subcontract Change Orders (C.O. No.'s 1, 2, 3, 4 and 6 – executed by both parties)	<u>29,457.72</u>
3. Subcontract Sum To Date (Line 1 + 2)	<u>1,861,207.72</u>
4. Value of work performed and/or approved material stored at jobsite (excluding punchlist work)	<u>1,861,207.72</u>
5. Retainage on Line No. 4 (equals value of open punchlist)	<u>138,885.00</u>
6. Total Earned Less Retainage (Line 4 less Line 5)	<u>1,721,342.72</u>
7. Total Payments Received from Jackson Construction	<u>1,687,348.81</u>
8. Current Payment Due (Line 6 less Line 7)	<u>23,993.91</u>
9. Value to be performed to Finish (Line 3 less Line 4)	<u>0.00</u>
10. Value of reserved claims per Subcontractor (see attached Exhibit A), does not include interest and attorneys fees to which the Subcontractor may be entitled, if any, in connection with the lawsuit pending in the Middlesex Superior Court captioned Hermes Engineering Inc. v. USF&G, Civil Action No. 05-2898.	<u>402,438.76</u>
11. Value of reserved claims / backcharges known to date (per Principal and or Surety) (see attached Exhibit B), value of reserved claims does not include claim for offset against Subcontractor for amounts which the Subcontractor fails to pay Emerson-Swan Company, d/b/a Sytec Controls for labor and materials provided to the Project at issue in the lawsuit pending in the Middlesex Superior Court captioned Emerson-Swan Company, d/b/a Sytec Controls v. Hermes Engineering, Inc. et al. Civil Action No. 05-2854. Subcontractor reserves its rights with respect to this action.	<u>(91,226.10)</u>

In consideration of my (our) being paid within fifteen (15) days from the date this Agreement is fully executed by UNITED STATES FIDELITY AND GUARANTEE COMPANY, or its successors or assigns (Surety), for the net amount of \$ 23,993.81 due (No. 8 above) and its agreement to pay me (us) our retainage of \$ 139,866.00 (No. 5 above) on a progress basis, as punch list items are completed, signed off by the Architect / Owner, and paid by the Owner, and Surety's receipt of the retainage from the Owner, I (we) hereby agree to perform the balance of the work amounting to \$ 0.00 (No. 9 above) as well as punch list work amounting to \$139,866.00 (No. 5 above) as a subcontractor in accordance with the terms and conditions of the Undersigned's subcontract with Jackson Construction Co., Inc. (Principal), which subcontract is hereby reaffirmed and/or reinstated. (A complete current punch list, as authored by the Owner's representatives, is attached as Exhibit C to this Agreement.) In further consideration of the payment of the sum stated in No. 8 above paid by Surety and when the check has cleared the bank and has been paid, the Subcontractor hereby releases and forever discharges Surety from all actions, causes of action, claims and demands that the Undersigned, any heirs, legal representatives, or assigns of the Undersigned may now have or that might subsequently accrue arising out of any of the work performed on the above-referenced project, excepting only the amount set forth in No. 5 above, to the extent of actual work performed, and claims as reserved in No. 10 above. The Undersigned hereby agrees to perform the balance of the work as a subcontractor for the Surety's designee or assignee in accordance with the terms and conditions of the Undersigned's subcontract with the Principal including, but not limited to, all warranties.

IT IS FURTHER UNDERSTOOD AND AGREED that the Undersigned, to the extent of the payment made hereunder, hereby assigns its claims for labor, material, or equipment rental, lien rights, stop notice rights and causes of action against the Principal and the Owner to Surety with the Undersigned constituting Surety its irrevocable attorney-in-fact to demand payment for and enforce payment of said liens, stop notices, and causes of action, including, but not limited to, bringing suit hereon, providing releases therefore, and taking all steps to perfect the same, and all at the Surety's sole discretion and election.

IT IS FURTHER UNDERSTOOD AND AGREED that the agreement of Surety or its designee or assignee to pay retainage or any future payments is subject to any defenses or claims the Principal, the Surety or its designee or assignee may have arising out of the subcontract that exist now or that may arise in the future that entitle the Owner, Principal, or Surety and/or its designee or its assignee to back charge, set off, or deduct from the retainage or any future payments any amounts for which the Undersigned may be or is responsible, including but not limited to the amount under No. 11, above. The execution of this Agreement shall not waive or estop the Surety from raising any such defenses or claims.

IT IS FURTHER UNDERSTOOD AND AGREED that Surety is in the process of negotiations with the Owner on the referenced contract. If proper arrangements can be made with the Owner for the completion of this project pursuant to the terms of the Surety's performance bond, your subcontract, purchase order, change orders or agreement may be assigned to a new general contractor or construction manager. In the interim, the Undersigned agrees and shall continue to perform the balance of the work for the Surety or its designee or assignee. All future billings under the subcontract shall be presented to the Surety until such time as the Surety notifies the Undersigned that the Surety has appointed a designee or assignee. The continued use of you as a subcontractor is at the sole discretion of Surety. If it is determined by Surety to either not use you as a subcontractor or assign your subcontract agreement, then any retainage held will be directed to you within 30 days after project acceptance and retentions are released by the Owner and received by Surety assuming there are not backcharges against you. At the sole discretion of the Surety or its designee or assignee, any one of them may terminate any or all of the work provided for in the subcontract prior to its completion, at their convenience. In such event, an equitable settlement for the work performed under the subcontract and this Agreement shall be made. The Undersigned shall be paid for the reasonable value of the work performed up to the time of termination for which payment has not been made, together with a pro rata portion of its profit and overhead which is directly attributable to the performed, but unpaid for work.

IT IS FURTHER UNDERSTOOD AND AGREED that the Undersigned certifies that any labor, material, and/or subcontractor furnished by the Undersigned, was actually furnished, delivered, or used in construction of the aforementioned project.

IT IS FURTHER UNDERSTOOD AND AGREED that the Undersigned covenants with Surety and the Owner that the money received hereby will be treated as trust moneys, and used to pay all persons or companies who have furnished labor and/or materials at the Undersigned's request on the aforementioned project, and that a good and sufficient release of all claims and waiver of lien will be obtained from all such persons or companies including but not limited to Emerson-Swan Company, d/b/a Sytec Controls. In addition, all costs incurred by Surety because of failure to obtain such waiver and release of all claims, or arising from any breach of these covenants or promises made in this Agreement, including any attorney's fees reasonably incurred thereby, will be paid by the Undersigned.

THE UNDERSIGNED FURTHER WARRANTS AND REPRESENTS AND HEREBY certifies that, to the extent of payments received by the Undersigned, all just and lawful billings, accounts and/or amounts due from the Undersigned and/or its subcontractors or material suppliers for labor, material, equipment employed in the performance of this contract have been fully paid or will be fully paid, including but not limited to Emerson-Swan Company, d/b/a Sytec Controls.

IT IS FURTHER UNDERSTOOD AND AGREED that the Undersigned will indemnify the Surety and its General Contractor / Construction Manager and save the Surety and its General Contractor / Construction Manager harmless from any claim, demand, lien, or right of lien which may now or hereafter be asserted by the Undersigned or any laborer, materialman, supplier, or subcontractor of the Undersigned, who asserts a claim, demand, or lien arising out of or in any manner connected with, directly or indirectly, labor performed materials furnished or any other work performed on the project. The Undersigned further agrees to defend the Surety and its General Contractor / Construction Manager in all actions arising therefrom, paying any costs, expenses, attorney's fees, and any other fees incidental thereto.

To the fullest extent permitted by law, the undersigned shall indemnify and hold harmless the Surety and its General Contractor / Construction Manager against any and all claims, losses, liability, damages, costs, expenses and attorneys fees on account of any injury or claimed injury, to persons or property, tangible or intangible, arising out of or claim to arise out of any act or omission of the undersigned, its agents, servants, employees, representatives, subcontractors, or suppliers.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

Subcontractor Hold Agreement
Conditional Partial Release & Indemnity Agreement

IT IS FURTHER UNDERSTOOD AND AGREED that the Undersigned has carefully read this Agreement and the same is signed with the proper authority as the free act and deed of said Undersigned.

DATED this 23 day of MARCH, 2006.

SUBCONTRACTOR: Hermes Engineering, Inc.

By:

Print Name: Philip Thawley

Title: Pres.

Address: 60 TRIPP ST.

FREMLINGHAM, MA

01702

508(270)-8842

508(270)-9146

HERMES.GEN@AOL.COM

DATED this 20 day of April, 2006.

UNITED STATES FIDELITY AND
GUARANTEE COMPANY

By:

Print Name: Gordon Paterson

Title: Claim Counsel

Address: One Tower Square

Bond Claim - 14 CZ

Hartford, CT 06183

860-277-2409

860-277-5722

GPATERSO@stperuitravelers.com

11/15/05

Subj: Fwd: FW: HHS - Punchlist Review #5 (Mechanical)
Date: 6/27/2006 7:26:06 AM Eastern Standard Time
From: [Hermes6060](#)
To: [Robmeltzer](#)

Forwarded Message:

Subj: FW: HHS - Punchlist Review #5 (Mechanical)
Date: 6/26/2006 9:59:56 PM Eastern Standard Time
From: [jlemieux@vertexeng.com](#)
To: [hermes6060@aol.com](#)
CC: [tscalzo@vertexeng.com](#), [pnetburn@HNSO.ORG](#)

Sent from the Internet (Details)

FYI

From: Jon Lemieux -- Vertex
Sent: Monday, June 26, 2006 9:57 PM
To: 'Troy Randall'
Cc: Debbe Bennett; Patrick Tompkins, PE; Wayne E Mattson; John Barton; tgould923@comcast.net; Mike Pellegrini -- Vertex; Terry Scalzo -- Vertex
Subject: RE: HHS - Punchlist Review #5 (Mechanical)
Importance: High

Troy

That only addresses the items on the "G & V" tab of the spreadsheet (see revisions attached). However items were also reviewed on the Phase I, II, III and IIIa tabs as well. Please advise as those items total over \$23K together - on top of those listed below. (Please be advised that items listed as "Out of Scope" are being dealt with by CTA/USF & G directly with Hermes.)

Thank you!

Jon

From: Troy Randall [<mailto:randall@AI-3.com>]
Sent: Monday, June 26, 2006 4:34 PM
To: tgould923@comcast.net; Mike Pellegrini -- Vertex; John Barton
Cc: Jon Lemieux -- Vertex; Debbe Bennett; Patrick Tompkins, PE; Wayne E Mattson
Subject: HHS - Punchlist Review #5 (Mechanical)

On Thursday, June 22nd our mechanical engineer, Wayne Mattson (Griffith & Vary, Inc.) met with Terry Scalzo (Vertex Engineering) and Phil Horowitz (Hermes Engineering) to review the mechanical (HVAC) Hull High School punchlist. As a result, the following items of incomplete work, listed by "Reference No.", have been completed and can be removed from the punchlist (Exhibit A):

HVAC Punchlist

8, 14, 15, 17, 18, 19, 20, 21, 30, 36, 40, 42, 48, 87, 88, 89, 91

Please let me know if you have any questions.

Thank you,
Troy Randall